

# SENATE BILL No. 930

October 21, 2009, Introduced by Senators WHITMER, ANDERSON, CHERRY, OLSHOVE, BARCIA, CLARKE, BASHAM, SWITALSKI, HUNTER, SCOTT and BRATER and referred to the Committee on Banking and Financial Institutions.

A bill to create the foreclosure protection act; to regulate certain mortgage foreclosure consultants, foreclosure consulting contracts, equity purchasers, and equity purchase contracts; and to provide penalties and remedies for violations of that act.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "foreclosure protection act".

3       Sec. 2. (1) As used in this act:

4       (a) "Associate" means a partner, a subsidiary, an affiliate,  
5 an agent, or any other person working in association with a  
6 foreclosure consultant or an equity purchaser. Associate does not  
7 include a person that is excluded from the definition of an equity  
8 purchaser or a foreclosure consultant.

1           (b) "Equity purchase contract" means an agreement between an  
2 equity purchaser and a homeowner concerning the acquisition of  
3 title to the homeowner's personal residence.

4           (c) "Equity purchaser" means a person that acquires title to a  
5 residence in foreclosure in the course of the person's business,  
6 vocation, or occupation. Equity purchaser does not include a person  
7 that acquires that title for the purpose of using the residence as  
8 his or her personal residence for at least 1 year or a person that  
9 acquires that title in a manner that meets any of the following:

10           (i) By a deed in lieu of foreclosure to the holder of an  
11 evidence of debt or an associate of the holder of an evidence of  
12 debt or the holder of a consensual lien or encumbrance of record  
13 that is recorded before the foreclosure sale in the register of  
14 deeds office of the county where the residence in foreclosure is  
15 located.

16           (ii) By a deed from any trustee, sheriff, or other person  
17 appointed by a court as a result of a foreclosure sale.

18           (iii) At a sale of property authorized by statute.

19           (iv) By order or judgment of any court.

20           (v) From the person's spouse or relative, from a relative of  
21 the person's spouse, or from a guardian, conservator, or personal  
22 representative of any of those individuals.

23           (vi) While performing services as a part of a person's normal  
24 business activities under any law of this state or the United  
25 States that regulates financial institutions, an affiliate or  
26 subsidiary of any of the financial institutions, or an employee or  
27 agent acting on behalf of any of the financial institutions.

1 (d) "Evidence of debt" means a writing that evidences a  
2 promise to pay or a right to the payment of a monetary obligation,  
3 including, but not limited to, a promissory note; bond; negotiable  
4 instrument; loan, credit, or similar agreement; or monetary  
5 judgment entered by a court of competent jurisdiction.

6 (e) "Financial institutions" means banks, trust companies,  
7 savings and loan associations, credit unions, insurance companies,  
8 title insurers, insurance producers, or escrow companies authorized  
9 to conduct business in this state.

10 (f) Subject to subsection (2), "foreclosure consultant" means  
11 a person that meets both of the following:

12 (i) Does not, directly or through an associate, take or acquire  
13 any interest in or title to a residence in foreclosure.

14 (ii) In the course of the person's business, vocation, or  
15 occupation, makes a solicitation, representation, or offer to a  
16 homeowner to perform, in exchange for compensation from the  
17 homeowner or from the proceeds of any loan or advance of funds, a  
18 service that the person represents will do any of the following:

19 (A) Stop or postpone a foreclosure sale.

20 (B) Obtain a forbearance from a beneficiary under a deed of  
21 trust, mortgage, or other lien.

22 (C) Assist the homeowner in exercising a right to cure a  
23 default.

24 (D) Obtain an extension of the period within which the  
25 homeowner may cure a default.

26 (E) Obtain a waiver of an acceleration clause contained in an  
27 evidence of debt secured by a deed of trust, mortgage, or other

1 lien on a residence in foreclosure or contained in that deed of  
2 trust, mortgage, or other lien.

3 (F) Assist the homeowner to obtain a loan or an advance of  
4 funds.

5 (G) Avoid or reduce the impairment of the homeowner's credit  
6 resulting from the recording of a notice of election and demand for  
7 sale, commencement of a judicial foreclosure action, or due to any  
8 foreclosure sale or the granting of a deed in lieu of foreclosure  
9 or resulting from any late payment or other failure to pay or  
10 perform under the evidence of debt, the deed of trust, or other  
11 lien securing that evidence of debt.

12 (H) In any way delay, hinder, or prevent the foreclosure of  
13 the homeowner's residence.

14 (I) Assist the homeowner in obtaining from the beneficiary,  
15 mortgagee, or grantee of the lien in foreclosure, or from counsel  
16 for that beneficiary, mortgagee, or grantee, the remaining or  
17 excess proceeds from the foreclosure sale of the residence in  
18 foreclosure.

19 (g) "Foreclosure consulting contract" means any agreement  
20 between a foreclosure consultant and a homeowner.

21 (h) "Holder of evidence of debt" means the person in actual  
22 possession of or otherwise entitled to enforce an evidence of debt,  
23 except that holder of evidence of debt does not include a person  
24 acting as a nominee solely for the purpose of holding the evidence  
25 of debt or deed of trust as an electronic registry without any  
26 authority to enforce the evidence of debt or deed of trust. Each of  
27 the following persons is presumed to be the holder of evidence of

1 debt:

2 (i) The person who is the obligee of and who is in possession  
3 of an original evidence of debt.

4 (ii) The person in possession of an original evidence of debt  
5 and a proper endorsement or assignment of that evidence of debt to  
6 that person.

7 (iii) The person in possession of a negotiable instrument  
8 evidencing a debt that has been duly negotiated to that person or  
9 to bearer or indorsed in blank.

10 (iv) The person in possession of an evidence of debt with  
11 authority, which may be granted by the original evidence of debt or  
12 deed of trust, to enforce the evidence of debt as an agent, a  
13 nominee, or a trustee or in a similar capacity for the obligee of  
14 the evidence of debt.

15 (i) "Homeowner" means the owner of a residence in foreclosure,  
16 including a vendee under a land contract.

17 (j) "Residence in foreclosure" means a residence or dwelling  
18 that is occupied as the homeowner's principal place of residence  
19 and against which any type of foreclosure action, including, but  
20 not limited to, the filing of a notice of default of a deed of  
21 trust or the filing of a lawsuit to foreclose a mortgage or other  
22 lien, has been commenced.

23 (2) Foreclosure consultant does not include any of the  
24 following:

25 (a) An individual licensed to practice law in this state while  
26 performing any activity related to the individual's attorney-client  
27 relationship with a homeowner or any activity related to the

1 individual's attorney-client relationship with the beneficiary,  
2 mortgagee, grantee, or holder of any lien being enforced by way of  
3 foreclosure.

4 (b) A holder or servicer of an evidence of debt or the  
5 attorney for the holder or servicer of an evidence of debt secured  
6 by a deed of trust or other lien on any residence in foreclosure  
7 while the person performs services in connection with the evidence  
8 of debt, lien, deed of trust, or other lien securing that debt.

9 (c) A person doing business under any law of this state or the  
10 United States that regulates financial institutions, while the  
11 person performs services as part of the person's normal business  
12 activities, an affiliate or subsidiary of any of the financial  
13 institutions, or an employee or agent acting on behalf of any of  
14 the financial institutions.

15 (d) A person originating or closing a loan in a person's  
16 normal course of business if either of the following applies to  
17 that loan:

18 (i) The loan is subject to the requirements of the real estate  
19 settlement procedures act of 1974, 12 USC 1730f, 1831b, and 2601 to  
20 2617.

21 (ii) With respect to a junior mortgage or home equity line of  
22 credit, the loan is subordinate to and closed simultaneously with a  
23 qualified first mortgage loan under subparagraph (i) or is initially  
24 payable on the face of the note or contract to an entity described  
25 in subdivision (c).

26 (e) A judgment creditor of the homeowner.

27 (f) A title insurance company or title insurance agent

1 authorized to conduct business in this state while performing title  
2 insurance and settlement services.

3 (g) A person licensed as a real estate broker, associate  
4 broker, or real estate salesperson in this state while the person  
5 engages in any activity for which the person is licensed.

6 (h) A nonprofit organization that solely offers counseling or  
7 advice to homeowners in foreclosure or loan default, unless the  
8 organization is an associate of the foreclosure consultant.

9 Sec. 3. (1) A foreclosure consulting contract shall be in  
10 writing and provided to and retained by the homeowner, with  
11 changes, alterations, or modifications, for review at least 24  
12 hours before it is signed by the homeowner.

13 (2) A foreclosure consulting contract shall be printed in at  
14 least 12-point type and shall include the name, address, facsimile  
15 number, and electronic mail address of the foreclosure consultant  
16 to which a notice of cancellation may be delivered and the date the  
17 homeowner signed the contract.

18 (3) A foreclosure consulting contract shall fully disclose the  
19 exact nature of the foreclosure consulting services to be provided  
20 and the total amount and terms of any compensation to be received  
21 by the foreclosure consultant or associate.

22 (4) A foreclosure consulting contract shall be dated and  
23 personally signed, with each page being initialed by each homeowner  
24 of the residence in foreclosure and the foreclosure consultant, and  
25 shall be acknowledged by a notary public in the presence of the  
26 homeowner at the time the contract is signed by the homeowner.

27 (5) A foreclosure consulting contract shall contain the

following notice, printed in at least 14-point, boldfaced 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 MICHIGAN LAW

\_\_\_\_\_  
(NAME OF FORECLOSURE CONSULTANT) 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 OF FORECLOSURE CONSULTANT) 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 OF FORECLOSURE CONSULTANT) AT \_\_\_\_\_ (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND ELECTRONIC MAIL ADDRESS) .

AS PART OF ANY CANCELLATION, YOU (THE HOMEOWNER) 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 60 DAYS, ALONG WITH INTEREST AT THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE BOARD PLUS 2 PERCENTAGE POINTS, WITH THE TOTAL INTEREST RATE NOT TO EXCEED 8 PERCENT PER YEAR.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF



1 YOUR HOME. CONTACT AN ATTORNEY OR A HOUSING COUNSELOR APPROVED BY  
 2 THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT BEFORE  
 3 SIGNING.

4 (6) A completed form in duplicate, captioned NOTICE OF  
 5 CANCELLATION, shall accompany a foreclosure consulting contract.

6 The notice of cancellation shall meet all of the following:

7 (a) Be on a separate sheet of paper attached to the contract.

8 (b) Be easily detachable.

9 (c) Contain the following statement, printed in at least 14-  
 10 point type:

11 NOTICE OF CANCELLATION

12 \_\_\_\_\_ (DATE OF CONTRACT)

13 TO: (NAME OF FORECLOSURE CONSULTANT)

14 (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND  
 15 ELECTRONIC MAIL ADDRESS)

16 I HEREBY CANCEL THIS CONTRACT.

17 \_\_\_\_\_ (DATE)

18 \_\_\_\_\_ (HOMEOWNER'S SIGNATURE)

19 (7) A foreclosure consultant shall provide to the homeowner a  
 20 signed, dated, and acknowledged copy of the foreclosure consulting  
 21 contract and the attached notice of cancellation immediately upon  
 22 execution of the contract.

23 (8) The time during which the homeowner may cancel a  
 24 foreclosure consulting contract does not begin to run until the  
 25 foreclosure consultant has complied with this section.

26 Sec. 4. (1) In addition to any right of rescission available  
 27 under state or federal law, a homeowner has the right to cancel a

1 foreclosure consulting contract at any time. For purposes of this  
2 section, cancellation of a foreclosure consulting contract occurs  
3 when a homeowner gives written notice of cancellation of the  
4 foreclosure consulting contract to the foreclosure consultant at  
5 the address specified in the contract or through any facsimile  
6 number or electronic mail address identified in the contract or  
7 other materials provided to the homeowner by the foreclosure  
8 consultant.

9 (2) If given by mail, notice of cancellation of a foreclosure  
10 consulting contract is effective when deposited in the United  
11 States mail, properly addressed, with postage prepaid. A notice of  
12 cancellation may be in a form other than the form provided for in  
13 the contract and is effective, however expressed, if it indicates  
14 the intention of the homeowner to cancel the foreclosure consulting  
15 contract.

16 (3) As part of the cancellation of a foreclosure consulting  
17 contract, the homeowner shall within 60 days after the date of  
18 cancellation repay all funds paid or advanced in good faith before  
19 the receipt of notice of cancellation by the foreclosure consultant  
20 or his or her associate under the terms of the foreclosure  
21 consulting contract, together with interest at the prime rate  
22 published by the federal reserve board plus 2 percentage points, or  
23 8% per year, whichever is lower, from the date of expenditure until  
24 repaid by the homeowner.

25 (4) Except as provided in subsection (3), the right to cancel  
26 a foreclosure consulting contract shall not be conditioned on the  
27 repayment of any money.

1       Sec. 5. A provision in a foreclosure consulting contract is  
2 void as against public policy if the provision attempts or purports  
3 to do any of the following:

4       (a) Waive any of the rights specified in sections 3 to 8 or  
5 the right to a jury trial.

6       (b) Consent to jurisdiction for litigation or choice of law in  
7 a state other than this state.

8       (c) Consent to venue in a county other than the county in  
9 which the residence in foreclosure is located.

10       (d) Impose any costs or fees greater than the actual costs and  
11 fees.

12       Sec. 6. A foreclosure consultant shall not do any of the  
13 following:

14       (a) Claim, demand, charge, collect, or receive any  
15 compensation until after the foreclosure consultant has fully  
16 performed each and every service the foreclosure consulting  
17 contracted to perform or represented that the foreclosure  
18 consultant would perform.

19       (b) Claim, demand, charge, collect, or receive any interest or  
20 any other compensation for a loan that the foreclosure consultant  
21 makes to the homeowner that exceeds the prime rate published by the  
22 federal reserve board at the time of any loan plus 2 percentage  
23 points, or 8% per year, whichever is lower.

24       (c) Take a wage assignment, a lien of any type on real or  
25 personal property, or any other security to secure the payment of  
26 compensation.

27       (d) Receive any consideration from a third party in connection

1 with foreclosure consulting services provided to a homeowner unless  
2 the consideration is first fully disclosed in writing to the  
3 homeowner.

4 (e) Acquire an interest, directly, indirectly, or through an  
5 associate, in the real or personal property of a homeowner with  
6 whom the foreclosure consultant has contracted.

7 (f) Obtain a power of attorney from a homeowner for any  
8 purpose other than to inspect documents as provided by law.

9 (g) Induce or attempt to induce a homeowner to enter into a  
10 foreclosure consulting contract that does not comply in all  
11 respects with sections 3 to 8.

12 Sec. 7. A foreclosure consultant or associate may not  
13 facilitate or engage in any transaction that is unconscionable  
14 under the terms and circumstances of the transaction. All of the  
15 following apply concerning whether a transaction is unconscionable:

16 (a) If a court, as a matter of law, finds a foreclosure  
17 consulting contract or any clause of a foreclosure consulting  
18 contract was unconscionable at the time it was made, the court may  
19 refuse to enforce the contract, enforce the remainder of the  
20 contract without the unconscionable clause, or limit the  
21 application of any unconscionable clause so as to avoid an  
22 unconscionable result.

23 (b) If it is claimed or appears to a court that a foreclosure  
24 consulting contract or any clause of a foreclosure consulting  
25 contract may be unconscionable, the parties shall be afforded a  
26 reasonable opportunity to present evidence as to its commercial  
27 setting, purpose, and effect to aid the court in making the

1 determination.

2 (c) In order to support a finding of unconscionability, there  
3 must be evidence of an unreasonable inequality of bargaining power  
4 or other circumstances in which there is an absence of meaningful  
5 choice for 1 of the parties, together with contract terms that are  
6 unreasonably favorable to the foreclosure consultant or associate  
7 under standard industry practices.

8 Sec. 8. A foreclosure consulting contract, and all notices of  
9 cancellation provided for in the contract, shall be written in  
10 English and shall be accompanied by a written translation from  
11 English into any other language principally spoken by the  
12 homeowner, certified by the person making the translation as a true  
13 and correct translation of the English version. The translated  
14 version is presumed to have equal status and credibility as the  
15 English version.

16 Sec. 9. An equity purchase contract shall be written in at  
17 least 12-point, boldfaced type and fully completed, signed, and  
18 dated by the homeowner and equity purchaser before the execution of  
19 any instrument quitclaiming, assigning, transferring, conveying, or  
20 encumbering an interest in the residence in foreclosure.

21 Sec. 10. (1) An equity purchase contract shall contain the  
22 entire agreement of the parties and shall include at least all of  
23 the following:

24 (a) The name, business address, telephone number, facsimile  
25 number, and electronic mail address of the equity purchaser.

26 (b) The street address and full legal description of the  
27 residence in foreclosure.

(c) Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the homeowner, the equity purchase contract shall so state.

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

(e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the homeowner before or after the sale.

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

(g) The terms of any rental agreement or lease.

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

(i) A notice of cancellation as provided in section 12.

(j) The following notice, in at least 14-point, boldfaced type, completed with the name of the equity purchaser, immediately above the statement required by section 12:

NOTICE REQUIRED BY MICHIGAN LAW

UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED,

\_\_\_\_\_ (NAME) OR ANYONE WORKING FOR

\_\_\_\_\_ (NAME) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN

1 ANY DEED OR ANY OTHER DOCUMENT.

2 (2) An equity purchase contract required under this section  
3 survives delivery of any instrument of conveyance of the residence  
4 in foreclosure, but does not have any effect on persons other than  
5 the parties to the contract or affect title to the residence in  
6 foreclosure.

7 Sec. 11. (1) In addition to any right of rescission available  
8 under state or federal law, a homeowner has the right to cancel an  
9 equity purchase contract until 12 midnight of the third business  
10 day following the day on which the homeowner signs a contract that  
11 complies with this act or until 12 noon on the day before the  
12 foreclosure sale of the residence in foreclosure, whichever occurs  
13 first.

14 (2) For purposes of this section, cancellation of an equity  
15 purchase contract occurs when a homeowner personally delivers  
16 written notice of cancellation to the address specified in the  
17 equity purchase contract or upon deposit of that notice in the  
18 United States mail, properly addressed, with postage prepaid. A  
19 notice of cancellation may be in a form other than the form  
20 provided for in the contract and is effective, however expressed,  
21 if it indicates the intention of the homeowner to cancel the equity  
22 purchase contract.

23 (3) In the absence of any written notice of cancellation from  
24 a homeowner, the execution by the homeowner of a deed or other  
25 instrument of conveyance of an interest in the residence in  
26 foreclosure to the equity purchaser after the expiration of any  
27 applicable rescission period creates a rebuttable presumption that

the homeowner did not cancel the equity purchase contract.

Sec. 12. (1) An equity purchase contract shall contain, as the last provision before the space reserved for the homeowner's signature, a conspicuous statement in at least 12-point, boldfaced type, that states as follows:

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE WITHOUT ANY  
PENALTY OR OBLIGATION AT ANY TIME BEFORE \_\_\_\_\_ (DATE AND  
TIME OF DAY). SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN  
EXPLANATION OF THIS RIGHT.

(2) An equity purchaser shall accurately specify in an equity purchase contract the date and time of day on which the homeowner's cancellation right ends.

(3) An equity purchase contract shall be accompanied by duplicate completed forms, captioned "Notice of Cancellation", in at least 12-point, boldfaced type if the equity purchase contract is printed or in capital letters if the equity purchase contract is typed, followed by a space in which the equity purchaser shall enter the date on which the homeowner executed the equity purchase contract. The form shall meet all of the following:

(a) Be attached to the equity purchase contract.

(b) Be easily detachable.

(c) Contain the following statement, in at least 10-point type if the equity purchase contract is printed or in capital letters if the contract is typed:

## NOTICE OF CANCELLATION

\_\_\_\_\_ (ENTER DATE EQUITY PURCHASE CONTRACT SIGNED). YOU  
MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE, WITHOUT ANY



1 PENALTY OR OBLIGATION, AT ANY TIME BEFORE \_\_\_\_\_ (ENTER  
 2 DATE AND TIME OF DAY). TO CANCEL THIS TRANSACTION, PERSONALLY  
 3 DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION IN  
 4 THE UNITED STATES MAIL, POSTAGE PREPAID, TO \_\_\_\_\_, (NAME  
 5 OF PURCHASER) AT \_\_\_\_\_ (STREET ADDRESS OF PURCHASER'S  
 6 PLACE OF BUSINESS) NOT LATER THAN \_\_\_\_\_ (ENTER DATE AND  
 7 TIME OF DAY).

8 I HEREBY CANCEL THIS TRANSACTION \_\_\_\_\_ (DATE)  
 9 \_\_\_\_\_ (SELLER'S SIGNATURE).

10 (4) An equity purchaser shall provide the homeowner with a  
 11 copy of the equity purchase contract and the attached notice of  
 12 cancellation.

13 (5) The time during which the homeowner may cancel an equity  
 14 purchase contract does not begin to run until the equity purchaser  
 15 has complied with this section.

16 Sec. 13. (1) A transaction in which a homeowner purports to  
 17 grant a residence in foreclosure to an equity purchaser by an  
 18 instrument that appears to be an absolute conveyance and in which  
 19 an option to repurchase is reserved to the homeowner or is given by  
 20 the equity purchaser to the homeowner is permitted only if all of  
 21 the following conditions have been met:

22 (a) The reconveyance contract complies in all respects with  
 23 section 10.

24 (b) The reconveyance contract provides the homeowner with a  
 25 nonwaivable, 30-day right to cure any default of the reconveyance  
 26 contract and specifies that the homeowner may exercise this right  
 27 to cure on at least 3 separate occasions during the term of the

1 reconveyance contract.

2 (c) The equity purchaser fully assumes or discharges the lien  
3 in foreclosure as well as any prior liens that will not be  
4 extinguished by the foreclosure, and the assumption or discharge is  
5 accomplished without a violation of the terms and conditions of the  
6 liens being assumed or discharged.

7 (d) The equity purchaser verifies and can demonstrate that the  
8 homeowner has or will have a reasonable ability to make the lease  
9 payments and to repurchase the residence in foreclosure within the  
10 term of the option to repurchase under the reconveyance contract.

11 (2) For purposes of this section, there is a rebuttable  
12 presumption that the homeowner has a reasonable ability to make  
13 lease payments and to repurchase the residence in foreclosure if  
14 the homeowner's payments for primary housing expenses and regular  
15 principal and interest payments on other personal debt do not  
16 exceed 60% of the homeowner's monthly gross income; and that the  
17 price the homeowner must pay to exercise the option to repurchase  
18 the residence in foreclosure is not unconscionable. Without  
19 limiting any claim available under section 16, a repurchase price  
20 exceeding 25% of the price for which the equity purchaser acquired  
21 the residence in foreclosure creates a rebuttable presumption that  
22 the reconveyance contract is unconscionable. The acquisition price  
23 paid by the equity purchaser may include any actual costs incurred  
24 by the equity purchaser in acquiring the residence in foreclosure.

25 Sec. 14. A provision in an equity purchase contract between an  
26 equity purchaser and a homeowner is void as against public policy  
27 if it attempts or purports to do any of the following:

1 (a) Waive any of the rights specified in sections 9 to 17 of  
2 this act or the right to a jury trial.

3 (b) Consent to jurisdiction for litigation or choice of law in  
4 a state other than this state.

5 (c) Consent to venue in a county other than the county in  
6 which the residence in foreclosure is located.

7 (d) Impose any costs or fees greater than the actual costs and  
8 fees.

9 Sec. 15. (1) The equity purchase contract provisions required  
10 under sections 9 to 14 shall be provided and completed in  
11 conformity with those sections by the equity purchaser.

12 (2) Until the time within which the homeowner may cancel the  
13 transaction has fully elapsed, an equity purchaser shall not do any  
14 of the following:

15 (a) Accept from a homeowner an execution of, or induce a  
16 homeowner to execute, an instrument of conveyance of any interest  
17 in the residence in foreclosure.

18 (b) Record with the register of deeds any document, including,  
19 but not limited to, the equity purchase contract, or any lease,  
20 lien, or instrument of conveyance signed by the homeowner.

21 (c) Transfer or encumber or purport to transfer or encumber an  
22 interest in the residence in foreclosure to a third party.

23 (d) Pay the homeowner any consideration.

24 (3) Within 10 days following receipt of a notice of  
25 cancellation given under sections 11 and 12, the equity purchaser  
26 shall return without condition the original equity purchase  
27 contract and any other documents signed by the homeowner.

1           (4) An equity purchaser shall not make any untrue or  
2 misleading statements of material fact regarding the value of the  
3 residence in foreclosure, the amount of proceeds the homeowner will  
4 receive after a foreclosure sale, any equity purchase contract  
5 term, the homeowner's rights or obligations incident to or arising  
6 out of the sale transaction, or the nature of any document that the  
7 equity purchaser induces the homeowner to sign or any other untrue  
8 or misleading statement concerning the sale of the residence in  
9 foreclosure to the equity purchaser.

10           Sec. 16. An equity purchaser or associate may not facilitate  
11 or engage in any transaction that is unconscionable under the terms  
12 and circumstances of the transaction. All of the following apply  
13 concerning whether a transaction is unconscionable:

14           (a) If a court, as a matter of law, finds an equity purchase  
15 contract or any clause of that contract to have been unconscionable  
16 at the time it was made, the court may refuse to enforce the equity  
17 purchase contract, enforce the remainder of the equity purchase  
18 contract without the unconscionable clause, or limit the  
19 application of any unconscionable clause so as to avoid an  
20 unconscionable result.

21           (b) If it is claimed or appears to the court that the contract  
22 or any clause of the contract may be unconscionable, the parties  
23 shall be afforded a reasonable opportunity to present evidence as  
24 to its commercial setting, purpose, and effect to aid the court in  
25 making the determination.

26           (c) In order to support a finding of unconscionability, there  
27 must be evidence of some bad faith overreaching on the part of the

1 equity purchaser or associate such as that which results from an  
2 unreasonable inequality of bargaining power or under other  
3 circumstances in which there is an absence of meaningful choice for  
4 1 of the parties, together with contract terms that are  
5 unreasonably favorable to the equity purchaser or associate under  
6 standard industry practices.

7       Sec. 17. Any equity purchase contract, rental agreement,  
8 lease, option or right to repurchase and any notice, conveyance,  
9 lien, encumbrance, consent, or other document or instrument signed  
10 by a homeowner shall be written in English and shall be accompanied  
11 by a written translation from English into any other language  
12 principally spoken by the homeowner, certified by the person making  
13 the translation as a true and correct translation of the English  
14 version. The translated version shall be presumed to have equal  
15 status and credibility as the English version.

16       Sec. 18. (1) Except as provided in subsection (2), the  
17 attorney general, a county prosecutor, or a homeowner may bring an  
18 action to do 1 or more of the following:

19       (a) Enjoin a person who is engaged or is about to engage in a  
20 method, act, or practice that violates this act.

21       (b) Obtain a declaratory judgment that a method, act, or  
22 practice violates this act.

23       (c) Recover actual damages consisting of an amount not less  
24 than the amount paid by the homeowner to the foreclosure consultant  
25 or equity purchaser, plus reasonable attorney fees and court costs.  
26 The court may also award the buyer any punitive damages that it  
27 considers proper.

1           (2) A person shall not bring an action under this section more  
2 than 4 years after the date of execution of the foreclosure  
3 consulting contract or equity purchase contract to which the action  
4 relates.

5           (3) In an action under this act, the burden of proving that a  
6 person is not a foreclosure consultant or equity purchaser is on  
7 that person.

8           (4) This section does not limit or prohibit any other legal  
9 remedy available to the attorney general, a county prosecutor, or a  
10 homeowner.

11          Sec. 19. A person that violates any provision of this act is  
12 guilty of a felony punishable by imprisonment for not more than 1  
13 year or a fine of not more than \$15,000.00, or both.