

REFERENCE TITLE: foreclosure rescue

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

## HB 2522

Introduced by  
Representatives Waters, Garcia M, McGuire: Ash, Barnes, Court, Konopnicki,  
Mason, McLain, Meyer, Pratt

AN ACT  
AMENDING TITLE 33, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4;  
RELATING TO HOME EQUITY PURCHASERS AND MORTGAGE CONSULTANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 33, chapter 6, Arizona Revised Statutes, is amended  
3 by adding article 4, to read:

4 ARTICLE 4. HOME EQUITY PURCHASERS AND MORTGAGE CONSULTANTS

5 33-761. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE" MEANS ANYONE ACTING  
8 IN GOOD FAITH WHO PURCHASES THE RESIDENTIAL REAL PROPERTY FROM THE EQUITY  
9 PURCHASER FOR VALUABLE CONSIDERATION OR PROVIDES THE EQUITY PURCHASER WITH A  
10 MORTGAGE OR DEED OF TRUST OR PROVIDES A SUBSEQUENT BONA FIDE PURCHASER WITH A  
11 MORTGAGE OR DEED OF TRUST IF THE BONA FIDE PURCHASER OR ENCUMBRANCER HAD NO  
12 NOTICE OF THE EQUITY SELLER'S CONTINUING RIGHT TO OR EQUITY IN THE PROPERTY  
13 BEFORE THE ACQUISITION OF TITLE OR ENCUMBRANCE, OF THE FACTS DEEMING THE  
14 DEED OR CONVEYANCE TO BE A MORTGAGE LOAN TRANSACTION OR OF ANY VIOLATION OF  
15 THIS ARTICLE RELATED TO THE PROPERTY BY THE EQUITY PURCHASER.

16 2. "BUSINESS DAY" MEANS ANY CALENDAR DAY EXCLUDING SATURDAY, SUNDAY OR  
17 OTHER PUBLIC LEGAL HOLIDAYS ENUMERATED IN SECTION 1-301.

18 3. "CONSIDERATION" MEANS ANY PAYMENT OR THING OF VALUE PROVIDED TO THE  
19 EQUITY SELLER, INCLUDING UNPAID LEASE PAYMENTS OWED BY THE EQUITY SELLER  
20 BEFORE THE DATE OF EVICTION OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY,  
21 REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE THE RECONVEYANCE  
22 TRANSACTION, PAYMENT OF MONIES TO SATISFY A DEBT OR LEGAL OBLIGATION OF THE  
23 EQUITY SELLER OR THE REASONABLE COST OF REPAIRS FOR DAMAGE TO THE DWELLING  
24 CAUSED BY THE EQUITY SELLER BEYOND ORDINARY WEAR AND TEAR, BUT DOES NOT  
25 INCLUDE AMOUNTS IMPUTED AS ANY FEE PAID DIRECTLY OR INDIRECTLY TO THE EQUITY  
26 PURCHASER, OR THE EQUITY PURCHASER'S REPRESENTATIVE, INCIDENT TO A  
27 RECONVEYANCE ARRANGEMENT, EXCEPT FOR REASONABLE COSTS PAID TO THIRD PARTIES  
28 NECESSARY TO COMPLETE THE RECONVEYANCE.

29 4. "COVERED CONTRACT" MEANS ANY CONTRACT, AGREEMENT OR ARRANGEMENT, OR  
30 ANY TERM OF A CONTRACT, AGREEMENT OR ARRANGEMENT, BETWEEN AN EQUITY PURCHASER  
31 AND EQUITY SELLER THAT IS EITHER:

32 (a) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE.

33 (b) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE OR DEFAULT IF  
34 THE CONTRACT, AGREEMENT OR ARRANGEMENT INCLUDES A RECONVEYANCE ARRANGEMENT.

35 5. "DEFAULT" MEANS THAT THE EQUITY SELLER IS TWO MONTHS OR MORE BEHIND  
36 IN PAYMENTS ON A MORTGAGE OR A DEED OF TRUST.

37 6. "EQUITY PURCHASER" MEANS ANY PERSON WHO ACQUIRES TITLE TO ANY  
38 RESIDENCE THAT IS THE SUBJECT OF A NOTICE OF TRUSTEE SALE, THAT IS IN  
39 FORECLOSURE OR, IF APPLICABLE, THAT IS IN DEFAULT, OR THAT PERSON'S  
40 REPRESENTATIVE, EXCEPT A PERSON WHO ACQUIRES TITLE AS FOLLOWS:

41 (a) TO USE THE PROPERTY AS A PRIMARY RESIDENCE AND THE PERSON ACTUALLY  
42 USES THE PROPERTY AS A PRIMARY RESIDENCE.

43 (b) BY A TRUSTEE'S DEED ON SALE PURSUANT TO LAW.

44 (c) AT ANY SALE OF PROPERTY AUTHORIZED BY STATUTE.

45 (d) BY ORDER OR JUDGMENT OF ANY COURT.

1 (e) FROM A SPOUSE OR FROM A PARENT, GRANDPARENT, CHILD, GRANDCHILD OR  
2 SIBLING OF THE PERSON OR THE PERSON'S SPOUSE.

3 (f) AS AN INTERNAL REVENUE SERVICE DESIGNATED NONPROFIT HOUSING  
4 ORGANIZATION OR AS A PUBLIC HOUSING AGENCY.

5 (g) THROUGH A SALE IN WHICH THE PROCEEDS ARE USED TO COMPLETELY  
6 SATISFY ALL EXISTING MORTGAGES OR DEEDS OF TRUST SECURED BY THE PROPERTY.

7 (h) AS A BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE.

8 7. "EQUITY SELLER" MEANS A NATURAL PERSON WHO IS A PROPERTY OWNER OR  
9 HOMEOWNER AT THE TIME OF THE EQUITY SALE.

10 8. "FORECLOSURE" MEANS THAT AN ACTION PURSUANT TO SECTION 33-721 HAS  
11 BEEN FILED TO FORECLOSE A MORTGAGE OR DEED OF TRUST SECURED BY THE SUBJECT  
12 PROPERTY, A NOTICE OF TRUSTEE'S SALE HAS BEEN GIVEN PURSUANT TO SECTION  
13 33-808 OR THE SUBJECT PROPERTY IS ON AN ACTIVE PROPERTY TAX LIEN SALE LIST.

14 9. "FORECLOSURE CONSULTANT" MEANS ANY PERSON WHO, DIRECTLY OR  
15 INDIRECTLY, MAKES ANY SOLICITATION, REPRESENTATION OR OFFER TO ANY HOMEOWNER  
16 THAT TO PERFORM FOR COMPENSATION OR WHO, FOR COMPENSATION, PERFORMS ANY  
17 SERVICE THAT THE PERSON IN ANY MANNER REPRESENTS WILL IN ANY MANNER DO ANY OF  
18 THE FOLLOWING WITH RESPECT TO RESIDENTIAL REAL PROPERTY:

19 (a) STOP OR POSTPONE THE FORECLOSURE SALE OR TRUSTEE'S SALE.

20 (b) OBTAIN ANY FORBEARANCE FROM ANY BENEFICIARY, TRUSTEE OR MORTGAGEE.

21 (c) ASSIST THE HOMEOWNER TO REINSTATE A MORTGAGE OR DEED OF TRUST  
22 AFTER ONE OR MORE PAYMENTS HAVE NOT BEEN TIMELY MADE.

23 (d) OBTAIN ANY WAIVER OF AN ACCELERATION CLAUSE CONTAINED IN ANY  
24 PROMISSORY NOTE OR CONTRACT SECURED BY A MORTGAGE OR DEED OF TRUST.

25 (e) ASSIST THE HOMEOWNER IN FORECLOSURE OR DEFAULT TO OBTAIN A LOAN OR  
26 ADVANCE OF FUNDS.

27 (f) AVOID OR AMELIORATE THE IMPAIRMENT OF THE HOMEOWNER'S CREDIT  
28 RESULTING FROM THE RECORDING OF A NOTICE OR A PROCEEDING RESULTING FROM A  
29 DEFAULT UNDER A MORTGAGE OR DEED OF TRUST.

30 (g) SAVE THE HOMEOWNER'S RESIDENCE FROM FORECLOSURE OR TRUSTEE'S SALE.

31 10. "PROPERTY OWNER" OR "HOMEOWNER" MEANS ANY OR ALL RECORD TITLE  
32 OWNERS OF THE RESIDENTIAL REAL PROPERTY IN FORECLOSURE OR, IF APPLICABLE, IN  
33 DEFAULT AT THE TIME OF THE EQUITY SALE.

34 11. "RECONVEYANCE ARRANGEMENT" MEANS AN ARRANGEMENT IN WHICH BOTH OF  
35 THE FOLLOWING OCCUR:

36 (a) THE TRANSFER OF TITLE TO RESIDENTIAL REAL PROPERTY BY AN EQUITY  
37 SELLER WHO IS IN DEFAULT OR FORECLOSURE, EITHER BY TRANSFER OF INTEREST FROM  
38 AN EQUITY SELLER TO AN EQUITY PURCHASER OR BY CREATION OF A MORTGAGE, DEED OF  
39 TRUST OR OTHER LIEN OR ENCUMBRANCE DURING THE TIME OF DEFAULT OR FORECLOSURE  
40 THAT ALLOWS THE EQUITY PURCHASER TO OBTAIN LEGAL OR EQUITABLE TITLE TO ALL OR  
41 PART OF THE PROPERTY.

42 (b) THE SUBSEQUENT CONVEYANCE OR PROMISE OF A SUBSEQUENT CONVEYANCE OF  
43 AN INTEREST, INCLUDING A PURCHASE AGREEMENT, OPTION TO PURCHASE OR LEASE,  
44 BACK TO THE EQUITY SELLER BY THE EQUITY PURCHASER THAT ALLOWS THE EQUITY  
45 SELLER TO REGAIN POSSESSION OF THE PROPERTY.

1           12. "REPRESENTATIVE" MEANS A PERSON WHO IN ANY MANNER SOLICITS,  
2 INDUCES, ARRANGES OR CAUSES ANY EQUITY SELLER TO TRANSFER TITLE OR SOLICITS  
3 ANY MEMBER OF THE EQUITY SELLER'S FAMILY OR HOUSEHOLD TO INDUCE OR CAUSE ANY  
4 EQUITY SELLER TO TRANSFER TITLE TO THE RESIDENCE IN FORECLOSURE OR, IF  
5 APPLICABLE, IN DEFAULT TO THE EQUITY PURCHASER.

6           13. "RESIDENCE" AND "RESIDENTIAL REAL PROPERTY" MEANS RESIDENTIAL REAL  
7 PROPERTY CONSISTING OF ONE TO FOUR FAMILY DWELLING UNITS, ONE OF WHICH THE  
8 EQUITY SELLER OCCUPIES OR OCCUPIED AS A PRIMARY RESIDENCE AT A TIME  
9 IMMEDIATELY BEFORE THE EQUITY SALE.

10           14. "SALE OF A RESIDENCE" INCLUDES A TRANSACTION IN WHICH AN EQUITY  
11 SELLER RECEIVES CONSIDERATION FROM THE EQUITY PURCHASER AND A TRANSACTION  
12 INVOLVING A TRANSFER OF TITLE TO THE EQUITY PURCHASER IN WHICH NO  
13 CONSIDERATION IS PROVIDED TO THE EQUITY SELLER.

14           33-762. Covered contracts; notices

15           A. EVERY COVERED CONTRACT AND NOTICE OF CANCELLATION ATTACHED TO THE  
16 CONTRACT SHALL BE WRITTEN IN LETTERS OF A SIZE EQUAL TO AT LEAST TWELVE-POINT  
17 BOLDFACE TYPE, IN ENGLISH OR IN BOTH ENGLISH AND SPANISH, IF SPANISH IS THE  
18 PRIMARY LANGUAGE USED BY THE EQUITY PURCHASER TO PRESENT THE TRANSACTION TO  
19 THE EQUITY SELLER, AND SHALL BE FULLY COMPLETED AND SIGNED AND DATED BY THE  
20 EQUITY SELLER AND EQUITY PURCHASER. ANY INSTRUMENT OF CONVEYANCE SHALL  
21 BECOME EFFECTIVE NO SOONER THAN MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE  
22 DATE ON WHICH THE COVERED CONTRACT IS EXECUTED.

23           B. ALL COVERED CONTRACTS SHALL CONTAIN THE ENTIRE AGREEMENT OF THE  
24 PARTIES AND SHALL INCLUDE THE FOLLOWING TERMS:

25           1. THE NAME, BUSINESS ADDRESS AND THE TELEPHONE NUMBER OF THE EQUITY  
26 PURCHASER.

27           2. THE ADDRESS OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,  
28 DEFAULT.

29           3. THE TOTAL CONSIDERATION TO BE GIVEN BY THE EQUITY PURCHASER IN  
30 CONNECTION WITH OR INCIDENT TO THE SALE.

31           4. A COMPLETE DESCRIPTION OF THE TERMS OF PAYMENT OR OTHER  
32 CONSIDERATION, INCLUDING THE FOLLOWING:

33           (a) ANY SERVICES OF ANY NATURE THE EQUITY PURCHASER AGREES TO PERFORM  
34 FOR THE EQUITY SELLER BEFORE OR AFTER THE SALE.

35           (b) THE RIGHTS AND OBLIGATIONS SUBSEQUENT TO THE SALE TRANSACTION OF  
36 THE EQUITY SELLER AND THE EQUITY PURCHASER WITH RESPECT TO ANY MORTGAGE OR  
37 DEED OF TRUST SECURED BY THE PROPERTY.

38           5. THE TIME, IF ANY, AT WHICH PHYSICAL POSSESSION OF THE RESIDENCE IS  
39 TO BE TRANSFERRED TO THE EQUITY PURCHASER AND THE RESIDENCE VACATED BY THE  
40 EQUITY SELLER.

41           6. THE TERMS OF ANY RENTAL OR LEASE AGREEMENT.

42           7. THE TERMS OF ANY RECONVEYANCE ARRANGEMENT.

43           8. A NOTICE OF CANCELLATION AS PROVIDED IN SUBSECTION E.

44           9. THE FOLLOWING NOTICE, WHICH MUST CONTAIN THE NAME OF THE EQUITY  
45 PURCHASER AND THE DATE AND TIME BY WHICH THE COVERED CONTRACT MUST BE

1 CANCELED, SHALL BE COMPLETED BY THE EQUITY PURCHASER AND SHALL APPEAR ON THE  
2 CONTRACT IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED FOR THE EQUITY SELLER'S  
3 SIGNATURE AND SHALL BE IN AT LEAST FOURTEEN-POINT BOLDFACE TYPE IF THE  
4 COVERED CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF THE COVERED CONTRACT IS  
5 TYPED:

6 NOTICE REQUIRED BY ARIZONA LAW

7 YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF  
8  (DATE) .  (NAME OF EQUITY PURCHASER)  OR ANYONE  
9 WORKING FOR  (NAME OF EQUITY PURCHASER)  CANNOT ASK YOU TO  
10 SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT UNTIL YOUR  
11 RIGHT TO CANCEL THIS CONTRACT HAS ENDED. SEE ATTACHED NOTICE OF  
12 CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. YOU SHOULD  
13 ALWAYS CONSULT AN ATTORNEY OR COMMUNITY ORGANIZATION BEFORE  
14 SIGNING ANY LEGAL DOCUMENTS CONCERNING YOUR HOME. IT IS  
15 ADVISABLE THAT YOU FIND YOUR OWN ATTORNEY AND NOT CONSULT WITH  
16 AN ATTORNEY WHO HAS BEEN PROVIDED TO YOU BY THE PURCHASER. THE  
17 LAW REQUIRES THAT THIS CONTRACT CONTAIN THE ENTIRE AGREEMENT.  
18 YOU SHOULD NOT RELY ON ANY OTHER WRITTEN OR ORAL AGREEMENT OR  
19 PROMISE.

20 C. THE EQUITY PURCHASER SHALL ACCURATELY ENTER IN THE NOTICE  
21 PRESCRIBED IN SUBSECTION B THE DATE ON WHICH THE RIGHT TO CANCEL ENDS. THE  
22 COVERED CONTRACT REQUIRED BY THIS SECTION SHALL SURVIVE DELIVERY OF ANY  
23 INSTRUMENT OF CONVEYANCE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,  
24 IN DEFAULT AND SHALL HAVE NO EFFECT ON PERSONS OTHER THAN THE PARTIES TO THE  
25 COVERED CONTRACT.

26 D. THE EQUITY SELLER HAS THE RIGHT TO CANCEL ANY COVERED CONTRACT WITH  
27 AN EQUITY PURCHASER UNTIL MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING THE  
28 DAY ON WHICH THE EQUITY SELLER AND EQUITY PURCHASER SIGN A COVERED CONTRACT  
29 THAT COMPLIES WITH THIS SECTION. CANCELLATION OCCURS WHEN THE EQUITY SELLER,  
30 OR A REPRESENTATIVE OF THE EQUITY SELLER, PERSONALLY DELIVERS WRITTEN NOTICE  
31 OF CANCELLATION TO THE ADDRESS SPECIFIED IN THE COVERED CONTRACT OR SENDS TO  
32 THE BUSINESS ADDRESS OF THE EQUITY PURCHASER LISTED IN THE COVERED CONTRACT,  
33 VIA FAX, UNITED STATES MAIL OR OTHER MEANS OF WRITTEN COMMUNICATION, OR  
34 THROUGH AN ESTABLISHED COMMERCIAL LETTER DELIVERY SERVICE, A LETTER  
35 INDICATING CANCELLATION. PROOF OF FAX DELIVERY OR PROOF OF MAILING CREATES A  
36 PRESUMPTION THAT THE NOTICE OF CANCELLATION HAS BEEN DELIVERED. A NOTICE OF  
37 CANCELLATION GIVEN BY THE EQUITY SELLER PURSUANT TO THIS SUBSECTION NEED NOT  
38 TAKE THE PARTICULAR FORM AS PROVIDED WITH THE COVERED CONTRACT AND, HOWEVER  
39 EXPRESSED, IS EFFECTIVE IF IT INDICATES THE INTENTION OF THE EQUITY SELLER  
40 NOT TO BE BOUND BY THE COVERED CONTRACT. WITHIN TEN DAYS AFTER RECEIPT OF A  
41 NOTICE OF CANCELLATION GIVEN IN ACCORDANCE WITH THIS SUBSECTION, THE EQUITY  
42 PURCHASER SHALL RETURN WITHOUT CONDITION ANY ORIGINAL COVERED CONTRACT AND  
43 ANY OTHER DOCUMENTS SIGNED BY THE EQUITY SELLER AS WELL AS ANY FEE OR OTHER  
44 CONSIDERATION RECEIVED BY THE EQUITY PURCHASER FROM THE EQUITY SELLER.

1 CANCELLATION OF THE CONTRACT SHALL RELEASE THE EQUITY SELLER OF ALL  
2 OBLIGATIONS TO PAY FEES TO THE EQUITY PURCHASER.

3 E. THE COVERED CONTRACT SHALL BE ACCOMPANIED BY A FORM COMPLETED BY  
4 THE EQUITY PURCHASER IN DUPLICATE, CAPTIONED "NOTICE OF CANCELLATION" IN AT  
5 LEAST TWELVE-POINT BOLDFACE TYPE IF THE COVERED CONTRACT IS PRINTED OR IN  
6 CAPITAL LETTERS IF THE COVERED CONTRACT IS TYPED. THIS FORM SHALL BE  
7 ATTACHED TO THE COVERED CONTRACT, SHALL BE EASILY DETACHABLE AND SHALL  
8 CONTAIN, IN AT LEAST TWELVE-POINT BOLDFACE TYPE IF THE COVERED CONTRACT IS  
9 PRINTED OR IN CAPITAL LETTERS IF THE COVERED CONTRACT IS TYPED, THE FOLLOWING  
10 STATEMENT WRITTEN IN THE SAME LANGUAGE USED IN THE COVERED CONTRACT:

11 NOTICE OF CANCELLATION

12 THIS CONTRACT WAS ENTERED INTO ON (ENTER DATE COVERED CONTRACT  
13 SIGNED). YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR  
14 HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE  
15 MIDNIGHT OF (ENTER DATE). TO CANCEL THIS TRANSACTION,  
16 PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION  
17 NOTICE, OR SEND IT BY FAX, UNITED STATES MAIL OR AN ESTABLISHED  
18 COMMERCIAL LETTER DELIVERY SERVICE, INDICATING CANCELLATION TO  
19 (NAME OF PURCHASER), AT (STREET ADDRESS OF PURCHASER'S  
20 PLACE OF BUSINESS AND FAX NUMBER, IF ANY) NOT LATER THAN  
21 MIDNIGHT OF (ENTER DATE). IF YOU WISH TO CANCEL THIS  
22 CONTRACT, SIGN AND DATE BOTH COPIES AND RETURN ONE COPY  
23 IMMEDIATELY TO THE PURCHASER. I HEREBY CANCEL THIS TRANSACTION.

24 \_\_\_\_\_  
25 (SELLER'S SIGNATURE)

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

26 F. THE EQUITY PURCHASER SHALL PROVIDE EACH EQUITY SELLER WITH TWO  
27 COPIES OF THE COVERED CONTRACT AND ATTACHED NOTICE OF CANCELLATION. THE  
28 EQUITY PURCHASER SHALL ACCURATELY ENTER THE DATE ON WHICH THE RIGHT TO CANCEL  
29 ENDS.

30 33-763. False or misleading statements; prohibited acts;  
31 violations; classification

32 A. BEFORE MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE ON WHICH  
33 THE COVERED CONTRACT IS EXECUTED, THE EQUITY PURCHASER SHALL NOT DO ANY OF  
34 THE FOLLOWING:

35 1. ACCEPT FROM ANY EQUITY SELLER AN EXECUTION OF OR INDUCE ANY EQUITY  
36 SELLER TO EXECUTE ANY INSTRUMENT OF CONVEYANCE OF ANY INTEREST IN THE  
37 RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN DEFAULT.

38 2. RECORD WITH THE COUNTY RECORDER ANY DOCUMENT, INCLUDING ANY  
39 INSTRUMENT OF CONVEYANCE, SIGNED BY THE EQUITY SELLER.

40 3. TRANSFER OR ENCUMBER OR PURPORT TO TRANSFER OR ENCUMBER TO ANY  
41 THIRD PARTY ANY INTEREST IN THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,  
42 IN DEFAULT.

43 4. PAY THE EQUITY SELLER ANY CONSIDERATION.

1           5. SUGGEST, ENCOURAGE OR PROVIDE ANY FORM THAT ALLOWS THE EQUITY  
2 SELLER TO WAIVE THE EQUITY SELLER'S RIGHT TO CANCEL OR RESCIND UNDER THIS  
3 ARTICLE.  
4           B. AN EQUITY PURCHASER SHALL NOT MAKE A FALSE OR MISLEADING STATEMENT  
5 REGARDING:  
6           1. THE VALUE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN  
7 DEFAULT.  
8           2. THE AMOUNT OF PROCEEDS THE EQUITY SELLER WILL RECEIVE AFTER A  
9 FORECLOSURE SALE PURSUANT TO ARTICLE 2 OF THIS CHAPTER OR A TRUSTEE'S SALE  
10 PURSUANT TO CHAPTER 6.1 OF THIS TITLE.  
11           3. THE TIMING OF THE JUDICIAL FORECLOSURE PROCESS OR SALE OF TRUST  
12 PROPERTY.  
13           4. ANY CONTRACT TERM.  
14           5. THE EQUITY SELLER'S RIGHTS OR OBLIGATIONS INCIDENT TO OR ARISING  
15 OUT OF THE SALE TRANSACTION OR RECONVEYANCE ARRANGEMENT.  
16           6. THE NATURE OF ANY DOCUMENT THAT THE EQUITY PURCHASER INDUCES THE  
17 EQUITY SELLER TO SIGN.  
18           7. THE SALE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN  
19 DEFAULT, OR CONCERNING THE RECONVEYANCE ARRANGEMENT.  
20           C. AN EQUITY PURCHASER SHALL NOT REPRESENT, DIRECTLY OR INDIRECTLY,  
21 THAT:  
22           1. THE EQUITY PURCHASER IS ACTING AS AN ADVISOR OR A CONSULTANT FOR OR  
23 IN ANY OTHER MANNER IS ACTING ON BEHALF OF THE EQUITY SELLER.  
24           2. THE EQUITY PURCHASER IS CERTIFIED OR LICENSED IF THIS IS NOT TRUE,  
25 OR THAT THE EQUITY PURCHASER IS NOT LICENSED IF THE EQUITY PURCHASER IS  
26 ACTUALLY LICENSED.  
27           3. THE EQUITY PURCHASER IS ASSISTING THE EQUITY SELLER TO SAVE THE  
28 HOUSE UNLESS THE EQUITY PURCHASER HAS A GOOD FAITH AND REASONABLE BASIS FOR  
29 THE REPRESENTATION.  
30           4. THE EQUITY PURCHASER IS ASSISTING THE EQUITY SELLER IN PREVENTING A  
31 COMPLETED FORECLOSURE OR TRUSTEE'S SALE UNLESS THE EQUITY PURCHASER HAS A  
32 GOOD FAITH AND REASONABLE BASIS FOR THE REPRESENTATION.  
33           D. AN EQUITY PURCHASER SHALL NOT:  
34           1. INITIATE, ENTER INTO, NEGOTIATE OR CONSUMMATE ANY COVERED CONTRACT  
35 INVOLVING RESIDENTIAL REAL PROPERTY IN FORECLOSURE OR SUBJECT TO A TRUSTEE'S  
36 SALE, OR, IF APPLICABLE, IN DEFAULT IF THE EQUITY PURCHASER, BY THE TERMS OF  
37 THE COVERED CONTRACT, TAKES UNCONSCIONABLE ADVANTAGE OF THE EQUITY SELLER.  
38           2. OPERATE IN THIS STATE WITHOUT A LICENSE ISSUED PURSUANT TO TITLE 6,  
39 CHAPTER 9, ARTICLE 1 OR 2, UNLESS OTHERWISE PROVIDED BY LAW.  
40           E. AN EQUITY SELLER MAY BRING AN ACTION FOR THE RECOVERY OF DAMAGES OR  
41 EQUITABLE RELIEF AGAINST AN EQUITY PURCHASER FOR A VIOLATION OF SECTION  
42 33-762, SUBSECTION A, B OR E, SECTION 33-764 OR THIS SECTION. A COURT MAY  
43 AWARD TO A PREVAILING EQUITY SELLER ACTUAL DAMAGES PLUS REASONABLE ATTORNEY  
44 FEES AND COSTS. IN ADDITION, THE COURT MAY AWARD EQUITABLE RELIEF OR  
45 INCREASE THE AWARD IN AN AMOUNT NOT TO EXCEED THREE TIMES THE EQUITY SELLER'S

1 ACTUAL DAMAGES, OR BOTH, IF THE COURT DEEMS SUCH AN AWARD PROPER. ANY ACTION  
2 BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED WITHIN SIX YEARS AFTER  
3 THE DATE OF THE ALLEGED VIOLATION.

4 F. ANY EQUITY PURCHASER WHO:

5 1. WITH INTENT TO DEFRAUD, VIOLATES SUBSECTION A, B, C OR D OF THIS  
6 SECTION OR ENGAGES IN ANY PRACTICE THAT WOULD OPERATE AS CRIMINAL FRAUD OR  
7 DECEIT ON AN EQUITY SELLER, ON CONVICTION, IS GUILTY OF A CLASS 5 FELONY AND  
8 IS SUBJECT TO A FINE OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR  
9 IMPRISONMENT, OR BOTH.

10 2. KNOWINGLY VIOLATES SUBSECTION A, B, C OR D OF THIS SECTION, ON  
11 CONVICTION, IS GUILTY OF A CLASS 1 MISDEMEANOR AND IS SUBJECT TO A FINE OF  
12 NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH. A  
13 SECOND OFFENSE WITHIN FIVE YEARS IS A CLASS 5 FELONY AND IS SUBJECT TO A FINE  
14 OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH.

15 3. IF ACTING IN GOOD FAITH, VIOLATES SUBSECTION A, B, C OR D OF THIS  
16 SECTION IS NOT GUILTY OF THE VIOLATION IF THE EQUITY PURCHASER:

17 (a) ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMPLIANCE  
18 FAILURE WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR  
19 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID  
20 SUCH ERRORS.

21 (b) NOTIFIES THE EQUITY SELLER WITHIN NINETY DAYS AFTER THE CONTRACT  
22 DATE OF THE COMPLIANCE FAILURE.

23 (c) MAKES APPROPRIATE RESTITUTION TO THE EQUITY SELLER AND APPROPRIATE  
24 ADJUSTMENTS TO THE TRANSACTION WITHIN NINETY DAYS AFTER THE CONTRACT DATE.  
25 EXAMPLES OF BONA FIDE ERRORS INCLUDE CLERICAL, CALCULATION, COMPUTER  
26 MALFUNCTION AND PROGRAMMING AND PRINTING ERRORS. AN ERROR OF LEGAL JUDGMENT  
27 WITH RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS ARTICLE IS NOT A BONA FIDE  
28 ERROR, NOR IS A FAILURE TO PROVIDE NOTICES OR OTHER MATERIAL INFORMATION  
29 REQUIRED BY THIS ARTICLE.

30 33-764. Mortgage loan transaction; reconveyance; requirements;  
31 definitions

32 A. IN ADDITION TO THE REQUIREMENTS OF THIS ARTICLE, A TRANSACTION  
33 DEEMED TO BE A MORTGAGE LOAN UNDER THIS ARTICLE IS SUBJECT TO ARTICLES 1 AND  
34 2 OF THIS CHAPTER.

35 B. ANY TRANSACTION IN WHICH AN EQUITY SELLER PURPORTS TO GRANT A  
36 RESIDENCE THAT IS IN FORECLOSURE, SUBJECT TO A TRUSTEE'S SALE OR IN DEFAULT  
37 TO AN EQUITY PURCHASER BY ANY INSTRUMENT THAT APPEARS TO BE AN ABSOLUTE  
38 CONVEYANCE AND RESERVES TO THE EQUITY SELLER OR IS GIVEN BY THE EQUITY  
39 PURCHASER AN OPTION OR OTHER RIGHT TO REPURCHASE CREATES A PRESUMPTION THAT  
40 THE TRANSACTION IS A MORTGAGE LOAN TRANSACTION, WHICH MAY BE OVERCOME BY  
41 CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY, AND THAT THE PURPORTED  
42 ABSOLUTE CONVEYANCE IS A MORTGAGE OR DEED OF TRUST, EXCEPT THAT IF THE EQUITY  
43 PURCHASER HAS ENGAGED IN FOUR OR MORE SUCH TRANSACTIONS IN ANY TWELVE MONTH  
44 PERIOD, SUCH TRANSACTIONS ARE CONCLUSIVELY DEEMED TO BE MORTGAGE LOAN  
45 TRANSACTIONS.



1 C. AN EQUITY PURCHASER SHALL NOT ENTER INTO A RECONVEYANCE ARRANGEMENT  
2 UNLESS:

3 1. THE EQUITY PURCHASER VERIFIES BY APPROPRIATE DOCUMENTATION THAT THE  
4 EQUITY SELLER HAS OR IS LIKELY TO HAVE A REASONABLE ABILITY TO PAY FOR THE  
5 SUBSEQUENT CONVEYANCE OF AN INTEREST BACK TO THE EQUITY SELLER. IN THE CASE  
6 OF A LEASE WITH AN OPTION TO PURCHASE, PAYMENT ABILITY ALSO INCLUDES THE  
7 REASONABLE ABILITY TO PURCHASE THE PROPERTY WITHIN THE TERM OF THE OPTION TO  
8 PURCHASE. THERE IS A REBUTTABLE PRESUMPTION THAT THE EQUITY PURCHASER HAS  
9 NOT VERIFIED REASONABLE PAYMENT ABILITY IF THE EQUITY PURCHASER HAS NOT  
10 OBTAINED DOCUMENTS OTHER THAN A STATEMENT BY THE EQUITY SELLER OF ASSETS,  
11 LIABILITIES AND INCOME. THE STANDARD FOR DETERMINING A REASONABLE ABILITY TO  
12 PAY SHALL BE THE SAME GUIDELINES AS SET FORTH BY THE UNITED STATES DEPARTMENT  
13 OF HOUSING AND URBAN DEVELOPMENT'S FEDERAL HOUSING ADMINISTRATION.

14 2. THE EQUITY PURCHASER AND THE EQUITY SELLER COMPLETE A CLOSING FOR  
15 ANY RECONVEYANCE ARRANGEMENT IN WHICH THE EQUITY PURCHASER OBTAINS A DEED OR  
16 MORTGAGE FROM AN EQUITY SELLER. FOR THE PURPOSES OF THIS PARAGRAPH,  
17 "CLOSING" MEANS AN IN-PERSON MEETING TO COMPLETE FINAL DOCUMENTS INCIDENT TO  
18 THE SALE OF THE REAL PROPERTY OR CREATION OF A MORTGAGE OR DEED OF TRUST ON  
19 THE REAL PROPERTY CONDUCTED BY A LICENSED ESCROW AGENT OR AN ATTORNEY WHO IS  
20 NOT EMPLOYED BY OR AN AFFILIATE OF THE EQUITY PURCHASER.

21 3. THE EQUITY PURCHASER OBTAINS WRITTEN CONSENT FROM THE EQUITY SELLER  
22 BEFORE THE EQUITY PURCHASER GRANTS ANY INTEREST IN THE PROPERTY TO ANYONE  
23 ELSE DURING THE TIME THE EQUITY SELLER MAINTAINS AN INTEREST IN THE PROPERTY,  
24 INCLUDING AN OPTION TO REPURCHASE.

25 4. THE EQUITY PURCHASER NOTIFIES ALL EXISTING DEED OF TRUST OR  
26 MORTGAGE LIENHOLDERS OF THE EQUITY PURCHASER'S INTENT TO ACCEPT CONVEYANCE OF  
27 AN INTEREST IN THE PROPERTY FROM THE EQUITY SELLER AND FULLY COMPLIES WITH  
28 ALL TERMS AND CONDITIONS CONTAINED IN THE DEED OF TRUST OR MORTGAGE LIEN  
29 DOCUMENTS, INCLUDING DUE-ON-SALE PROVISIONS OR MEETING ALL QUALIFICATION  
30 REQUIREMENTS FOR ASSUMING THE REPAYMENT OF THE MORTGAGE OR DEED OF TRUST.

31 D. AN EQUITY PURCHASER SHALL NOT ENTER INTO REPURCHASE OR LEASE TERMS  
32 AS PART OF THE RECONVEYANCE ARRANGEMENT THAT ARE UNFAIR OR COMMERCIALY  
33 UNREASONABLE AND SHALL NOT ENGAGE IN ANY OTHER UNFAIR OR UNCONSCIONABLE  
34 CONDUCT.

35 E. PAROL EVIDENCE IS ADMISSIBLE TO PROVE THAT A TRANSACTION BETWEEN AN  
36 EQUITY SELLER AND AN EQUITY PURCHASER IS A RECONVEYANCE ARRANGEMENT OR A  
37 MORTGAGE LOAN TRANSACTION.

38 F. AS PART OF A RECONVEYANCE ARRANGEMENT, AN EQUITY PURCHASER SHALL  
39 EITHER:

40 1. ENSURE THAT TITLE TO THE RESIDENCE IS RECONVEYED TO THE EQUITY  
41 SELLER.

42 2. MAKE A PAYMENT TO THE EQUITY SELLER IN AN AMOUNT OF AT LEAST  
43 EIGHTY-TWO PER CENT OF THE FAIR MARKET VALUE OF THE PROPERTY WITHIN ONE  
44 HUNDRED TWENTY DAYS AFTER EITHER THE EVICTION OF OR VOLUNTARY RELINQUISHMENT  
45 OF POSSESSION OF THE RESIDENCE BY THE EQUITY SELLER. THE EQUITY PURCHASER

1 SHALL MAKE A DETAILED ACCOUNTING OF THE BASIS FOR THE PAYMENT AMOUNT OR A  
2 DETAILED ACCOUNTING OF THE REASONS FOR FAILURE TO MAKE A PAYMENT, INCLUDING  
3 PROVIDING WRITTEN DOCUMENTATION OF EXPENSES, WITHIN THE ONE HUNDRED TWENTY  
4 DAY PERIOD. THE ACCOUNTING SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT  
5 OF FINANCIAL INSTITUTIONS. FOR PURPOSES OF THIS PARAGRAPH:

6 (a) THERE IS A REBUTTABLE PRESUMPTION THAT AN APPRAISAL BY A PERSON  
7 LICENSED OR CERTIFIED BY AN AGENCY OF THE FEDERAL GOVERNMENT OR THIS STATE TO  
8 APPRAISE REAL ESTATE ESTABLISHES THE FAIR MARKET VALUE OF THE PROPERTY.

9 (b) THE TIME FOR DETERMINING THE FAIR MARKET VALUE AMOUNT SHALL BE  
10 DETERMINED IN THE RECONVEYANCE ARRANGEMENT EITHER AT THE TIME OF THE  
11 EXECUTION OF THE RECONVEYANCE ARRANGEMENT OR AT RESALE TO A BONA FIDE  
12 PURCHASER. IF THE COVERED CONTRACT STATES THAT THE FAIR MARKET VALUE SHALL  
13 BE DETERMINED AT THE TIME OF RESALE, THE FAIR MARKET VALUE SHALL BE THE  
14 RESALE PRICE IF IT IS SOLD WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EVICTION  
15 OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY BY THE EQUITY SELLER. IF THE  
16 COVERED CONTRACT STATES THAT THE FAIR MARKET VALUE SHALL BE DETERMINED AT THE  
17 TIME OF RESALE AND THE RESALE IS NOT COMPLETED WITHIN ONE HUNDRED TWENTY DAYS  
18 AFTER THE EVICTION OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY BY THE EQUITY  
19 SELLER, THE FAIR MARKET VALUE SHALL BE DETERMINED BY AN APPRAISAL CONDUCTED  
20 WITHIN TEN DAYS AFTER THE END OF THE ONE HUNDRED TWENTY DAY PERIOD, AND  
21 PAYMENT, IF REQUIRED, SHALL BE MADE TO THE EQUITY SELLER. IF PAYMENT IS NOT  
22 MADE TO THE EQUITY SELLER AT THE TIME, THE FAIR MARKET VALUE SHALL BE  
23 RECALCULATED AS THE RESALE PRICE ON RESALE AND PAYMENT SHALL BE MADE TO THE  
24 EQUITY SELLER WITHIN FIFTEEN DAYS AFTER RESALE. A DETAILED ACCOUNTING OF THE  
25 BASIS FOR THE PAYMENT AMOUNT SHALL BE MADE WITHIN FIFTEEN DAYS OF RESALE,  
26 INCLUDING PROVIDING WRITTEN DOCUMENTATION OF EXPENSES. THE ACCOUNTING SHALL  
27 BE ON A FORM PRESCRIBED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

28 G. THIS SECTION DOES NOT ABROGATE ANY DUTY OF INQUIRY THAT EXISTS AS  
29 TO RIGHTS OR INTERESTS OF PERSONS IN POSSESSION OF THE RESIDENTIAL REAL  
30 PROPERTY THAT IS IN FORECLOSURE, SUBJECT TO TRUSTEE'S SALE OR IN DEFAULT.

31 H. ALL DEEDS OR CONVEYANCES SUBJECT TO A RECONVEYANCE ARRANGEMENT  
32 SHALL STATE EXPLICITLY ON THE FACE OF THE DOCUMENT THAT THE CONVEYANCE IS  
33 SUBJECT TO A RECONVEYANCE ARRANGEMENT AND SHALL STATE IN THE BODY OF THE  
34 CONVEYANCE INSTRUMENT THE TERMS OF THE RECONVEYANCE ARRANGEMENT. ALL  
35 RECONVEYANCE ARRANGEMENTS MUST BE SIMULTANEOUSLY RECORDED BY THE EQUITY  
36 PURCHASER WITH THE SUBJECT DEED IN THE COUNTY RECORDER'S OFFICE WHERE THE  
37 PROPERTY IS LOCATED.

38 I. FOR THE PURPOSES OF THIS SECTION:

39 1. "RESALE" MEANS A BONA FIDE MARKET SALE OF THE PROPERTY SUBJECT TO  
40 THE RECONVEYANCE ARRANGEMENT BY THE EQUITY PURCHASER TO AN UNAFFILIATED THIRD  
41 PARTY.

42 2. "RESALE PRICE" MEANS THE PURCHASE PRICE OF THE PROPERTY ON RESALE.

43 33-765. Limiting provisions void

44 ANY PROVISION OF A COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO LIMIT  
45 THE LIABILITY OF THE EQUITY PURCHASER UNDER THIS ARTICLE IS VOID. INCLUSION

1 OF THE PROVISION, AT THE OPTION OF THE EQUITY SELLER, SHALL RENDER THE  
2 COVERED CONTRACT VOID. THE EQUITY PURCHASER IS LIABLE TO THE EQUITY SELLER  
3 FOR ALL DAMAGES PROXIMATELY CAUSED BY THE PROVISION. ANY PROVISION IN A  
4 COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO REQUIRE ARBITRATION OF ANY  
5 DISPUTE ARISING UNDER THIS ARTICLE SHALL BE VOID AT THE OPTION OF THE EQUITY  
6 SELLER.

7 33-766. Foreclosure consultant; prohibited acts

8 EXCEPT AS PROVIDED IN SECTION 33-767, A PERSON SHALL NOT ACT AS A  
9 FORECLOSURE CONSULTANT.

10 33-767. Foreclosure consultant; exemptions

11 SECTION 33-766 DOES NOT APPLY TO THE FOLLOWING PERSONS OR ENTITIES, OR  
12 THEIR AGENTS AND EMPLOYEES:

13 1. THE FOLLOWING PERSONS ACTING WITHIN THE SCOPE OF A LICENSE GRANTED  
14 BY AN AGENCY OF THIS STATE:

15 (a) AN ATTORNEY.

16 (b) A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON.

17 (c) A MORTGAGE BROKER, LOAN ORIGINATOR, MORTGAGE BANKER OR COMMERCIAL  
18 MORTGAGE BANKER.

19 (d) AN ESCROW AGENT.

20 (e) A CONSUMER LENDER.

21 (f) A DEBT MANAGEMENT COMPANY.

22 (g) A CERTIFIED PUBLIC ACCOUNTANT.

23 2. A PERSON OR THE PERSON'S AUTHORIZED AGENT ACTING UNDER THE EXPRESS  
24 AUTHORITY OR WRITTEN APPROVAL OF THE DEPARTMENT OF HOUSING AND URBAN  
25 DEVELOPMENT OR OTHER DEPARTMENT OR AGENCY OF THE UNITED STATES OR THIS STATE  
26 TO PROVIDE SERVICES.

27 3. AN AGENCY OF ANY STATE OR THE UNITED STATES.

28 4. A PERSON WHO DOES BUSINESS UNDER ANY OTHER LAW OF THIS STATE, OR  
29 LAW OF ANY OTHER STATE WHILE REGULATED BY A STATE AGENCY OF THE OTHER STATE  
30 OR THE UNITED STATES, RELATING TO BANKS, SAVINGS BANKS, TRUST COMPANIES,  
31 SAVINGS AND LOAN ASSOCIATIONS, PROFIT SHARING AND PENSION TRUSTS, CREDIT  
32 UNIONS, INSURANCE COMPANIES OR CONSUMER LENDERS, OR RECEIVERSHIP, INCLUDING  
33 DIRECTLY OR INDIRECTLY MAKING, NEGOTIATING OR OFFERING TO MAKE OR NEGOTIATE A  
34 MORTGAGE LOAN IF THE MORTGAGE TRANSACTIONS ARE REGULATED BY THE OTHER LAW OR  
35 ARE UNDER THE JURISDICTION OF A COURT.

36 5. A NONPROFIT FEDERALLY TAX EXEMPT CORPORATION THAT OFFERS COUNSELING  
37 OR ADVICE TO AN OWNER OF A HOME IN FORECLOSURE OR LOAN DEFAULT IF THEY DO NOT  
38 CONTRACT FOR SERVICES WITH FOR PROFIT LENDERS OR EQUITY PURCHASERS.

39 6. A PERSON WHO HOLDS OR IS OWED AN OBLIGATION SECURED BY A LIEN ON  
40 ANY RESIDENTIAL REAL PROPERTY IF THE PERSON PERFORMS SERVICES IN CONNECTION  
41 WITH THIS OBLIGATION OR LIEN AND THE OBLIGATION OR LIEN DID NOT ARISE AS THE  
42 RESULT OF OR AS PART OF A PROPOSED COVERED CONTRACT.

43 7. A MORTGAGE SERVICER OR TRUSTEE UNDER A DEED OF TRUST ACTING WITHIN  
44 THE SCOPE OF ITS RESPONSIBILITIES AS A SERVICER OR TRUSTEE.

45 8. A COURT OF COMPETENT JURISDICTION.

1           9. A TRUSTEE IN BANKRUPTCY.  
2           10. A CREDIT SERVICES ORGANIZATION ACTING IN COMPLIANCE WITH TITLE 44,  
3 CHAPTER 11, ARTICLE 7.  
4           33-768. Consumer fraud; injunction; civil penalty  
5           A. A VIOLATION OF THIS ARTICLE IS AN UNLAWFUL PRACTICE IN VIOLATION OF  
6 SECTION 44-1522.  
7           B. IN ADDITION TO THE OTHER REMEDIES PROVIDED, IF A VIOLATION OF THIS  
8 ARTICLE OCCURS, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME  
9 OF THE PEOPLE OF THIS STATE TO A COURT OR JUSTICE HAVING JURISDICTION BY A  
10 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION AND, ON NOTICE TO THE DEFENDANT OF  
11 AT LEAST FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATIONS.  
12 IF THE COURT OR JUSTICE DETERMINES THAT THE DEFENDANT HAS VIOLATED THIS  
13 ARTICLE, THE COURT OR JUSTICE MAY ISSUE AN INJUNCTION ENJOINING AND  
14 RESTRAINING ANY FURTHER VIOLATION WITHOUT REQUIRING PROOF THAT ANY PERSON HAS  
15 ACTUALLY BEEN INJURED OR DAMAGED. IN ANY PROCEEDING, THE COURT MAY MAKE  
16 ALLOWANCES TO THE ATTORNEY GENERAL PURSUANT TO ALL APPLICABLE LAWS OR RULES  
17 AND DIRECT RESTITUTION. IF THE COURT DETERMINES THAT A VIOLATION OF THIS  
18 ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN  
19 TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH  
20 PROPOSED APPLICATION, THE ATTORNEY GENERAL MAY TAKE PROOF AND MAKE A  
21 DETERMINATION OF THE RELEVANT FACTS AND ISSUE SUBPOENAS IN ACCORDANCE WITH  
22 ALL APPLICABLE LAWS AND RULES.  
23           33-769. Prior lienholder  
24           THIS ARTICLE DOES NOT APPLY TO A PRIOR LIENHOLDER IF THE LIEN WAS  
25 PROPERLY RECORDED BEFORE THE EXECUTION OF ANY COVERED CONTRACT BY BOTH THE  
26 EQUITY SELLER AND THE EQUITY PURCHASER, AND THIS ARTICLE SHALL NOT IMPAIR ANY  
27 EQUITY OR OTHER AVAILABLE RIGHTS OF ANY PRIOR LIENHOLDER.  
28           33-770. Provisions not exclusive; rights and obligations not  
29           affected; waivers void; severability  
30           A. THIS ARTICLE IS NOT EXCLUSIVE AND IS IN ADDITION TO ANY OTHER  
31 REQUIREMENTS, RIGHTS, REMEDIES AND PENALTIES PROVIDED BY LAW.  
32           B. THIS ARTICLE DOES NOT AFFECT OR ALTER THE RIGHTS AND OBLIGATIONS OF  
33 A MORTGAGOR AND A MORTGAGEE WITH RESPECT TO A MORTGAGE, OR A TRUSTOR, TRUSTEE  
34 OR BENEFICIARY WITH RESPECT TO A DEED OF TRUST.  
35           C. ANY WAIVER OF ANY PROVISION OF THIS ARTICLE IS VOID AND  
36 UNENFORCEABLE AS CONTRARY TO PUBLIC POLICY.  
37           D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THIS ARTICLE  
38 TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, THE REMAINDER OF  
39 THIS ARTICLE AND THE APPLICATION OF ITS PROVISIONS TO OTHER PERSONS AND  
40 CIRCUMSTANCES SHALL NOT BE AFFECTED.  
41           Sec. 2. Short title  
42           This act shall be known and may be cited as the "Arizona home equity  
43 theft prevention act".