

REFERENCE TITLE: mortgage foreclosures

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2648

Introduced by
Representatives Ulmer, Ableser, Pancrazi, Sinema: Lopes, Prezelski

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 35; RELATING TO MORTGAGE FORECLOSURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 44, Arizona Revised Statutes, is amended by adding
3 chapter 35, to read:

4 CHAPTER 35

5 MORTGAGE FORECLOSURES

6 ARTICLE 1. GENERAL PROVISIONS

7 44-7801. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "CONSIDERATION":

10 (a) MEANS ANY PAYMENT OR THING OF VALUE PROVIDED TO A HOMEOWNER BY A
11 FORECLOSURE CONSULTANT OR FORECLOSURE PURCHASER.

12 (b) INCLUDES:

13 (i) UNPAID RENT, LEASE OR CONTRACTUAL PAYMENTS OWED BY THE HOMEOWNER
14 UNDER A FORECLOSURE CONVEYANCE AGREEMENT.

15 (ii) MORTGAGE LOAN OR OTHER PAYMENTS MADE ON BEHALF OF A HOMEOWNER BY
16 A FORECLOSURE CONSULTANT OR FORECLOSURE PURCHASER.

17 (iii) REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE A
18 FORECLOSURE RECONVEYANCE TRANSACTION OR TO AVOID FORECLOSURE.

19 (iv) THE PAYMENT OF MONIES TO SATISFY A DEBT OR LEGAL OBLIGATION OF
20 THE HOMEOWNER.

21 (v) THE REASONABLE COST OF REPAIRS FOR DAMAGE TO THE DWELLING CAUSED
22 BY THE HOMEOWNER.

23 (c) DOES NOT INCLUDE AMOUNTS IMPUTED AS A DOWN PAYMENT OR FEE TO THE
24 FORECLOSURE PURCHASER OR A PERSON ACTING IN PARTICIPATION WITH A FORECLOSURE
25 PURCHASER INCIDENT TO A CONTRACT FOR SALE, DEED, LEASE, TRUST OR OPTION TO
26 PURCHASE ENTERED INTO AS PART OF A FORECLOSURE RECONVEYANCE, EXCEPT FOR
27 REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE THE FORECLOSURE
28 RECONVEYANCE.

29 2. "FORECLOSURE CONSULTANT" MEANS A PERSON WHO DIRECTLY OR INDIRECTLY
30 MAKES ANY SOLICITATION, REPRESENTATION OR OFFER TO A HOMEOWNER TO PERFORM,
31 WITH OR WITHOUT COMPENSATION, OR WHO PERFORMS, WITH OR WITHOUT COMPENSATION,
32 ANY SERVICE THAT THE PERSON REPRESENTS WILL IN ANY MANNER SOLICIT OR CONTACT
33 A HOMEOWNER IN WRITING, IN PERSON OR THROUGH ANY ELECTRONIC OR
34 TELECOMMUNICATIONS MEDIUM AND WHO DIRECTLY OR INDIRECTLY MAKES A
35 REPRESENTATION OR OFFER TO PERFORM ANY SERVICE THAT THE PERSON REPRESENTS
36 WILL:

37 (a) STOP, ENJOIN, DELAY, VOID, SET ASIDE, ANNUL, STAY OR POSTPONE A
38 FORECLOSURE SALE.

39 (b) OBTAIN FORBEARANCE FROM ANY SERVICER, BENEFICIARY OR MORTGAGEE.

40 (c) ASSIST THE HOMEOWNER TO EXERCISE A RIGHT OF REINSTATEMENT PROVIDED
41 IN THE LOAN DOCUMENTS OR TO REFINANCE A LOAN THAT IS IN FORECLOSURE AND FOR
42 WHICH NOTICE OF FORECLOSURE PROCEEDINGS HAS BEEN PUBLISHED.

43 (d) OBTAIN AN EXTENSION OF THE PERIOD DURING WHICH THE HOMEOWNER MAY
44 REINSTATE THE HOMEOWNER'S OBLIGATION OR EXTEND THE DEADLINE TO OBJECT TO A
45 RATIFICATION.

- 1 (e) OBTAIN A WAIVER OF AN ACCELERATION CLAUSE CONTAINED IN ANY
- 2 PROMISSORY NOTE OR CONTRACT SECURED BY A MORTGAGE ON A RESIDENCE IN
- 3 FORECLOSURE OR CONTAINED IN THE MORTGAGE.
- 4 (f) ASSIST THE HOMEOWNER TO OBTAIN A LOAN OR ADVANCE OF FUNDS.
- 5 (g) AVOID OR AMELIORATE THE IMPAIRMENT OF THE HOMEOWNER'S CREDIT
- 6 RESULTING FROM THE FILING OF AN ORDER TO DOCKET OR A PETITION TO FORECLOSE OR
- 7 THE CONDUCT OF A FORECLOSURE SALE.
- 8 (h) SAVE THE HOMEOWNER'S RESIDENCE FROM FORECLOSURE.
- 9 (i) PURCHASE OR OBTAIN AN OPTION TO PURCHASE THE HOMEOWNER'S RESIDENCE
- 10 WITHIN TWENTY DAYS AFTER AN ADVERTISED OR DOCKETED FORECLOSURE SALE.
- 11 (j) ARRANGE FOR THE HOMEOWNER TO BECOME A LESSEE OR RENTER ENTITLED TO
- 12 CONTINUE TO RESIDE IN THE HOMEOWNER'S RESIDENCE.
- 13 (k) ARRANGE FOR THE HOMEOWNER TO HAVE AN OPTION TO REPURCHASE THE
- 14 HOMEOWNER'S RESIDENCE.
- 15 (l) ENGAGE IN ANY DOCUMENTATION, GRANT, CONVEYANCE, SALE, LEASE, TRUST
- 16 OR GIFT BY WHICH THE HOMEOWNER CLOGS THE HOMEOWNER'S EQUITY OF REDEMPTION IN
- 17 THE HOMEOWNER'S RESIDENCE OR SYSTEMATICALLY CONTACTS OWNERS OF PROPERTY THAT
- 18 COURT RECORDS OR NEWSPAPER ADVERTISEMENTS SHOW ARE IN FORECLOSURE OR IN
- 19 DANGER OF FORECLOSURE.
- 20 3. "FORECLOSURE CONSULTING CONTRACT" MEANS A WRITTEN, ORAL OR
- 21 EQUITABLE AGREEMENT BETWEEN A FORECLOSURE CONSULTANT AND A HOMEOWNER FOR THE
- 22 PROVISION OF ANY FORECLOSURE CONSULTING SERVICE OR FORECLOSURE RECONVEYANCE.
- 23 4. "FORECLOSURE CONSULTING SERVICE" INCLUDES:
- 24 (a) DEBT, BUDGET OR FINANCIAL COUNSELING OF ANY TYPE.
- 25 (b) RECEIVING MONEY FOR THE PURPOSE OF DISTRIBUTING IT TO CREDITORS IN
- 26 PAYMENT OR PARTIAL PAYMENT OF ANY OBLIGATION SECURED BY A LIEN ON A RESIDENCE
- 27 IN FORECLOSURE.
- 28 (c) CONTACTING CREDITORS ON BEHALF OF A HOMEOWNER.
- 29 (d) ARRANGING OR ATTEMPTING TO ARRANGE FOR AN EXTENSION OF THE PERIOD
- 30 DURING WHICH A HOMEOWNER MAY CURE THE HOMEOWNER'S DEFAULT AND REINSTATE THE
- 31 HOMEOWNER'S OBLIGATION.
- 32 (e) ARRANGING OR ATTEMPTING TO ARRANGE FOR ANY DELAY OR POSTPONEMENT
- 33 OF THE SALE OF A RESIDENCE IN FORECLOSURE.
- 34 (f) ADVISING THE FILING OF ANY DOCUMENT OR ASSISTING IN ANY MANNER IN
- 35 THE PREPARATION OF ANY DOCUMENT FOR FILING WITH A BANKRUPTCY COURT OR IN A
- 36 STATE COURT.
- 37 (g) GIVING ANY ADVICE, EXPLANATION OR INSTRUCTION TO A HOMEOWNER THAT
- 38 IN ANY MANNER RELATES TO THE CURE OF A DEFAULT IN OR THE REINSTATEMENT OF AN
- 39 OBLIGATION SECURED BY A LIEN ON THE RESIDENCE IN FORECLOSURE, THE FULL
- 40 SATISFACTION OF THAT OBLIGATION OR THE POSTPONEMENT OR AVOIDANCE OF A SALE OF
- 41 A RESIDENCE IN FORECLOSURE UNDER A POWER OF SALE OR AN ASSENT TO A DECREE
- 42 CONTAINED IN ANY MORTGAGE OR DEED OF TRUST.
- 43 (h) ARRANGING OR FACILITATING THE PURCHASE OF A HOMEOWNER'S EQUITY OF
- 44 REDEMPTION OR LEGAL OR EQUITABLE TITLE WITHIN TWENTY DAYS AFTER AN ADVERTISED
- 45 OR DOCKETED FORECLOSURE SALE.

1 (i) ARRANGING OR FACILITATING ANY TRANSACTION THROUGH WHICH A
2 HOMEOWNER WILL BECOME A LESSEE, OPTIONEE, LIFE TENANT, PARTIAL HOMEOWNER OR
3 VESTED OR CONTINGENT REMAINDERMAN OF THE HOMEOWNER'S RESIDENCE.

4 (j) ARRANGING OR FACILITATING THE SALE OF A HOMEOWNER'S RESIDENCE OR
5 THE TRANSFER OF LEGAL TITLE, IN ANY FORM, TO ANOTHER PARTY AS AN ALTERNATIVE
6 TO FORECLOSURE.

7 (k) ARRANGING FOR A HOMEOWNER TO HAVE AN OPTION TO REPURCHASE THE
8 HOMEOWNER'S RESIDENCE AFTER A SALE OR TRANSFER.

9 (l) ARRANGING FOR OR FACILITATING A HOMEOWNER REMAINING IN THE
10 HOMEOWNER'S RESIDENCE AS A TENANT, RENTER OR LESSEE.

11 (m) ARRANGING OR FACILITATING ANY OTHER GRANT, CONVEYANCE, SALE,
12 LEASE, TRUST OR GIFT BY WHICH A HOMEOWNER CLOGS THE HOMEOWNER'S EQUITY OF
13 REDEMPTION IN THE HOMEOWNER'S RESIDENCE.

14 5. "FORECLOSURE PURCHASER" MEANS A PERSON WHO ACQUIRES TITLE OR
15 POSSESSION OF A DEED OR OTHER DOCUMENT TO A RESIDENCE IN FORECLOSURE AS A
16 RESULT OF A FORECLOSURE RECONVEYANCE.

17 6. "FORECLOSURE RECONVEYANCE" MEANS A TRANSACTION INVOLVING BOTH OF
18 THE FOLLOWING:

19 (a) THE TRANSFER OF TITLE TO REAL PROPERTY BY A HOMEOWNER DURING OR
20 INCIDENT TO A PROPOSED FORECLOSURE PROCEEDING, EITHER BY TRANSFER OF INTEREST
21 FROM THE HOMEOWNER TO ANOTHER PARTY OR BY CREATION OF A MORTGAGE, TRUST OR
22 OTHER LIEN OR ENCUMBRANCE DURING THE FORECLOSURE PROCESS THAT ALLOWS THE
23 ACQUIRER TO OBTAIN LEGAL OR EQUITABLE TITLE TO ALL OR PART OF THE PROPERTY.

24 (b) THE SUBSEQUENT CONVEYANCE, OR PROMISE OF A SUBSEQUENT CONVEYANCE,
25 OF AN INTEREST BACK TO THE HOMEOWNER BY THE ACQUIRER OR A PERSON ACTING IN
26 PARTICIPATION WITH THE ACQUIRER THAT ALLOWS THE HOMEOWNER TO POSSESS THE REAL
27 PROPERTY FOLLOWING THE COMPLETION OF THE FORECLOSURE PROCEEDING, INCLUDING AN
28 INTEREST IN A CONTRACT FOR DEED, PURCHASE AGREEMENT, LAND INSTALLMENT SALE,
29 CONTRACT FOR SALE, OPTION TO PURCHASE, LEASE, TRUST OR OTHER CONTRACTUAL
30 ARRANGEMENT.

31 7. "FORECLOSURE SURPLUS ACQUISITION" MEANS A TRANSACTION INVOLVING THE
32 TRANSFER, SALE OR ASSIGNMENT OF THE SURPLUS REMAINING AND DUE THE HOMEOWNER
33 BASED ON THE AUDIT ACCOUNT DURING A FORECLOSURE PROCEEDING.

34 8. "FORECLOSURE SURPLUS PURCHASER" MEANS A PERSON WHO ACTS AS THE
35 ACQUIRER BY ASSIGNMENT, PURCHASE, GRANT OR CONVEYANCE OF THE SURPLUS
36 RESULTING FROM A FORECLOSURE SALE. FORECLOSURE SURPLUS PURCHASER INCLUDES A
37 PERSON WHO ACTS IN JOINT VENTURE OR JOINT ENTERPRISE WITH ONE OR MORE
38 ACQUIRERS.

39 9. "HOMEOWNER" MEANS THE RECORD OWNER OF A RESIDENCE IN FORECLOSURE OR
40 AT THE TIME AN ORDER TO DOCKET OR A PETITION TO FORECLOSE IS FILED.

41 10. "RESIDENCE IN FORECLOSURE" MEANS RESIDENTIAL REAL PROPERTY
42 CONSISTING OF NOT MORE THAN FOUR SINGLE FAMILY DWELLING UNITS, ONE OF WHICH
43 IS OCCUPIED BY THE HOMEOWNER, OR THE HOMEOWNER'S SPOUSE OR FORMER SPOUSE,
44 UNDER A COURT ORDER AS THE INDIVIDUAL'S PRINCIPAL PLACE OF RESIDENCE AND
45 AGAINST WHICH AN ORDER TO DOCKET OR A PETITION TO FORECLOSE HAS BEEN FILED.

1 44-7802. Foreclosure action; proposed sales; written notice

2 A. THE PERSON AUTHORIZED TO MAKE A SALE IN AN ACTION TO FORECLOSE A
3 MORTGAGE OR DEED OF TRUST SHALL GIVE WRITTEN NOTICE OF THE ACTION TO THE
4 RECORD OWNER OF THE PROPERTY TO BE SOLD.

5 B. THE WRITTEN NOTICE SHALL BE SENT WITHIN TWO DAYS AFTER THE ACTION
6 TO FORECLOSE IS DOCKETED. THE NOTICE SHALL BE SENT BOTH BY FIRST CLASS MAIL
7 AND BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, BEARING A
8 POSTMARK FROM THE UNITED STATES POSTAL SERVICE, TO THE RECORD OWNER.

9 C. THE NOTICE SHALL STATE THAT AN ACTION TO FORECLOSE THE MORTGAGE OR
10 DEED OF TRUST MAY BE OR HAS BEEN DOCKETED AND THAT A FORECLOSURE SALE OF THE
11 PROPERTY WILL BE HELD.

12 D. THE NOTICE PRESCRIBED IN SUBSECTION C SHALL CONTAIN THE FOLLOWING
13 STATEMENT PRINTED IN AT LEAST FOURTEEN POINT BOLDFACED TYPE:

14 NOTICE REQUIRED BY ARIZONA LAW

15 MORTGAGE FORECLOSURE IS A COMPLEX PROCESS. SOME PEOPLE MAY
16 APPROACH YOU ABOUT "SAVING" YOUR HOME. YOU SHOULD BE CAREFUL
17 ABOUT ANY SUCH PROMISES. THE STATE ENCOURAGES YOU TO BECOME
18 INFORMED ABOUT YOUR OPTIONS IN FORECLOSURE BEFORE ENTERING INTO
19 ANY AGREEMENTS WITH ANYONE IN CONNECTION WITH THE FORECLOSURE OF
20 YOUR HOME. THERE ARE GOVERNMENT AGENCIES AND NONPROFIT
21 ORGANIZATIONS THAT YOU MAY CONTACT FOR HELPFUL INFORMATION ABOUT
22 THE FORECLOSURE PROCESS. FOR THE NAME AND TELEPHONE NUMBER OF
23 AN ORGANIZATION NEAR YOU, PLEASE CALL THE CONSUMER INFORMATION
24 SECTION OF THE OFFICE OF THE ATTORNEY GENERAL AT 602-542-5763,
25 520-628-6504 OR 1-800-352-8431. THE STATE DOES NOT GUARANTEE
26 THE ADVICE OF THESE ORGANIZATIONS. DO NOT DELAY DEALING WITH
27 THE FORECLOSURE BECAUSE YOUR OPTIONS MAY BECOME MORE LIMITED AS
28 TIME PASSES.

29 E. IN ADDITION TO ANY NOTICE REQUIRED TO BE GIVEN BY STATE LAW, THE
30 PERSON AUTHORIZED TO MAKE A SALE IN AN ACTION TO FORECLOSE A MORTGAGE OR DEED
31 OF TRUST SHALL GIVE WRITTEN NOTICE OF THE PROPOSED SALE TO THE RECORD OWNER
32 OF THE PROPERTY TO BE SOLD.

33 F. THE WRITTEN NOTICE PRESCRIBED IN SUBSECTION E SHALL BE SENT BOTH BY
34 FIRST CLASS MAIL AND BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT
35 REQUESTED, BEARING A POSTMARK FROM THE UNITED STATES POSTAL SERVICE, TO THE
36 RECORD OWNER. THE NOTICE SHALL STATE THE TIME, PLACE AND TERMS OF THE SALE
37 AND SHALL BE SENT NOT EARLIER THAN THIRTY DAYS AND NOT LATER THAN TEN DAYS
38 BEFORE THE DATE OF SALE. THE NOTICE SHALL CONTAIN THE FOLLOWING STATEMENT
39 PRINTED IN AT LEAST FOURTEEN POINT BOLDFACED TYPE:

40 NOTICE REQUIRED BY ARIZONA LAW

41 MORTGAGE FORECLOSURE IS A COMPLEX PROCESS. SOME PEOPLE MAY
42 APPROACH YOU ABOUT "SAVING" YOUR HOME. YOU SHOULD BE CAREFUL
43 ABOUT ANY SUCH PROMISES. THE STATE ENCOURAGES YOU TO BECOME
44 INFORMED ABOUT YOUR OPTIONS IN FORECLOSURE BEFORE ENTERING INTO
45 ANY AGREEMENTS WITH ANYONE IN CONNECTION WITH THE FORECLOSURE OF

1 YOUR HOME. THERE ARE GOVERNMENT AGENCIES AND NONPROFIT
2 ORGANIZATIONS THAT YOU MAY CONTACT FOR HELPFUL INFORMATION ABOUT
3 THE FORECLOSURE PROCESS. FOR THE NAME AND TELEPHONE NUMBER OF
4 AN ORGANIZATION NEAR YOU, PLEASE CALL THE CONSUMER INFORMATION
5 SECTION OF THE OFFICE OF THE ATTORNEY GENERAL AT 602-542-5763,
6 520-628-6504 OR 1-800-352-8431. THE STATE DOES NOT GUARANTEE
7 THE ADVICE OF THESE ORGANIZATIONS. DO NOT DELAY DEALING WITH
8 THE FORECLOSURE BECAUSE YOUR OPTIONS MAY BECOME MORE LIMITED AS
9 TIME PASSES.

10 G. THE PERSON GIVING THE NOTICE SHALL FILE IN THE PROCEEDINGS A RETURN
11 RECEIPT OR AN AFFIDAVIT THAT EITHER:

- 12 1. THE PERSON HAS COMPLIED WITH SUBSECTION E.
- 13 2. THE ADDRESS OF THE RECORD OWNER IS NOT REASONABLY ASCERTAINABLE.

14 H. THE PERSON AUTHORIZED TO MAKE A SALE IN AN ACTION TO FORECLOSE A
15 MORTGAGE OR DEED OF TRUST IS NOT REQUIRED TO GIVE NOTICE TO A RECORD OWNER
16 WHOSE ADDRESS IS NOT REASONABLY ASCERTAINABLE.

17 I. IN THE EVENT OF POSTPONEMENT OF SALE, IN THE DISCRETION OF THE
18 TRUSTEE, NO NEW OR ADDITIONAL NOTICE NEED BE GIVEN PURSUANT TO THIS SECTION.

19 J. THE RIGHT OF A RECORD OWNER TO FILE AN ACTION FOR THE FAILURE OF
20 THE PERSON AUTHORIZED TO MAKE A SALE IN AN ACTION TO FORECLOSE A MORTGAGE OR
21 DEED OF TRUST TO COMPLY WITH OF THIS SECTION EXPIRES THREE YEARS AFTER THE
22 DATE OF THE ORDER RATIFYING THE FORECLOSURE SALE.

23 K. THE ENTRY OF AN ORDER FOR RESALE ON DEFAULT BY A PURCHASER AT A
24 SALE UNDER THIS SECTION:

25 1. DOES NOT AFFECT THE PRIOR RATIFICATION OF THE SALE AND DOES NOT
26 RESTORE TO THE MORTGAGOR OR FORMER RECORD OWNER ANY RIGHT OR REMEDY THAT WAS
27 EXTINGUISHED BY THE PRIOR SALE AND ITS RATIFICATION.

28 2. EXTINGUISHES ALL INTEREST OF THE DEFAULTING PURCHASER IN THE REAL
29 PROPERTY BEING FORECLOSED AND IN THE PROCEEDS OF THE RESALE.

30 L. FOR THE PURPOSES OF:

31 1. SUBSECTIONS A, B AND C, "RECORD OWNER" MEANS THE PERSON HOLDING
32 RECORD TITLE TO RESIDENTIAL REAL PROPERTY AS OF THE DATE ON WHICH AN ACTION
33 TO FORECLOSE THE MORTGAGE OR DEED OF TRUST IS FILED.

34 2. SUBSECTIONS E, F, G, H, J AND K, "RECORD OWNER" MEANS THE PERSON
35 HOLDING RECORD TITLE TO PROPERTY AS OF THE LATER OF:

36 (a) THIRTY DAYS BEFORE THE DAY ON WHICH A FORECLOSURE SALE OF THE
37 PROPERTY IS ACTUALLY HELD.

38 (b) THE DATE ON WHICH AN ACTION TO FORECLOSE THE MORTGAGE OR DEED OF
39 TRUST IS FILED.

40 44-7803. Applicability

41 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, THIS CHAPTER
42 DOES NOT APPLY TO:

43 1. AN INDIVIDUAL ADMITTED TO PRACTICE LAW IN THIS STATE WHILE
44 PERFORMING ANY ACTIVITY RELATED TO THE INDIVIDUAL'S REGULAR PRACTICE OF LAW
45 IN THIS STATE.

1 2. A PERSON WHO HOLDS OR IS OWED AN OBLIGATION SECURED BY A LIEN ON
2 ANY RESIDENCE IN FORECLOSURE WHILE THE PERSON PERFORMS SERVICES IN CONNECTION
3 WITH THE OBLIGATION OR LIEN, IF THE OBLIGATION OR LIEN DID NOT ARISE AS A
4 RESULT OF A FORECLOSURE RECONVEYANCE.

5 3. A PERSON DOING BUSINESS UNDER ANY LAW OF THIS STATE OR THE UNITED
6 STATES REGULATING BANKS, TRUST COMPANIES, SAVINGS AND LOAN ASSOCIATIONS,
7 CREDIT UNIONS OR INSURANCE COMPANIES WHILE THE PERSON PERFORMS SERVICES AS A
8 PART OF THE PERSON'S NORMAL BUSINESS ACTIVITIES.

9 4. ANY SUBSIDIARY, AFFILIATE OR AGENT OF A PERSON DESCRIBED IN
10 PARAGRAPH 1 OF THIS SUBSECTION WHILE THE SUBSIDIARY, AFFILIATE OR AGENT
11 PERFORMS SERVICES AS A PART OF THE SUBSIDIARY'S, AFFILIATE'S OR AGENT'S
12 NORMAL BUSINESS ACTIVITIES.

13 5. A JUDGMENT CREDITOR OF THE HOMEOWNER, IF THE JUDGMENT CREDITOR'S
14 CLAIM ACCRUED BEFORE THE WRITTEN NOTICE OF FORECLOSURE SALE REQUIRED UNDER
15 SECTION 44-7802 IS SENT.

16 6. A TITLE INSURER AUTHORIZED TO CONDUCT BUSINESS IN THE STATE WHILE
17 PERFORMING TITLE INSURANCE AND SETTLEMENT SERVICES.

18 7. A TITLE INSURANCE PRODUCER LICENSED IN THE STATE WHILE PERFORMING
19 SERVICES IN ACCORDANCE WITH THE PERSON'S LICENSE.

20 8. A PERSON LICENSED AS A MORTGAGE BROKER OR MORTGAGE LENDER UNDER
21 TITLE 6, CHAPTER 9 WHILE ACTING UNDER THE AUTHORITY OF THAT LICENSE.

22 9. A PERSON LICENSED AS A REAL ESTATE BROKER, ASSOCIATE REAL ESTATE
23 BROKER OR REAL ESTATE SALESPERSON UNDER TITLE 32, CHAPTER 20 WHILE THE PERSON
24 ENGAGES IN ANY ACTIVITY FOR WHICH THE PERSON IS LICENSED UNDER THAT CHAPTER
25 IF ANY CONVEYANCE OR TRANSFER OF DEED, TITLE OR ESTABLISHMENT OF EQUITABLE
26 INTEREST IS DONE THROUGH A SETTLEMENT AS DEFINED IN SECTION 44-7808.

27 10. A NONPROFIT ORGANIZATION THAT SOLELY OFFERS COUNSELING OR ADVICE TO
28 HOMEOWNERS IN FORECLOSURE OR LOAN DEFAULT IF THE ORGANIZATION IS NOT DIRECTLY
29 OR INDIRECTLY RELATED TO AND DOES NOT CONTRACT FOR SERVICES WITH FOR-PROFIT
30 LENDERS OR FORECLOSURE PURCHASERS.

31 B. THIS CHAPTER DOES APPLY TO AN INDIVIDUAL WHO IS BOTH:

32 1. FUNCTIONING IN A POSITION LISTED UNDER SUBSECTION A OF THIS
33 SECTION.

34 2. ENGAGING IN ACTIVITIES OR PROVIDING SERVICES DESIGNED OR INTENDED
35 TO TRANSFER TITLE TO A RESIDENCE IN FORECLOSURE DIRECTLY OR INDIRECTLY TO
36 THAT INDIVIDUAL OR AN AGENT OR AFFILIATE OF THAT INDIVIDUAL.

37 44-7804. Homeowner's rights; rescission of foreclosure
38 consulting contract or foreclosure reconveyance

39 A. IN ADDITION TO ANY OTHER RIGHT UNDER LAW TO CANCEL OR RESCIND A
40 CONTRACT, A HOMEOWNER HAS THE RIGHT TO BOTH:

41 1. RESCIND A FORECLOSURE CONSULTING CONTRACT AT ANY TIME.

42 2. RESCIND A FORECLOSURE RECONVEYANCE AT ANY TIME BEFORE MIDNIGHT OF
43 THE THIRD BUSINESS DAY AFTER ANY CONVEYANCE OR TRANSFER IN ANY MANNER OF
44 LEGAL OR EQUITABLE TITLE TO A RESIDENCE IN FORECLOSURE.

1 B. RESCISSION OCCURS WHEN THE HOMEOWNER GIVES WRITTEN NOTICE OF
2 RESCISSION TO THE FORECLOSURE CONSULTANT AT THE ADDRESS SPECIFIED IN THE
3 CONTRACT OR THROUGH ANY FAX OR ELECTRONIC MAIL ADDRESS IDENTIFIED IN THE
4 CONTRACT OR OTHER MATERIALS PROVIDED TO THE HOMEOWNER BY THE FORECLOSURE
5 CONSULTANT.

6 C. NOTICE OF RESCISSION, IF GIVEN BY MAIL, IS EFFECTIVE WHEN DEPOSITED
7 IN THE UNITED STATES MAIL, PROPERLY ADDRESSED, WITH POSTAGE PREPAID.

8 D. NOTICE OF RESCISSION NEED NOT BE IN THE FORM PROVIDED WITH THE
9 CONTRACT AND IS EFFECTIVE, HOWEVER EXPRESSED, IF IT INDICATES THE INTENTION
10 OF THE HOMEOWNER TO RESCIND THE FORECLOSURE CONSULTING CONTRACT OR
11 FORECLOSURE RECONVEYANCE.

12 E. AS PART OF THE RESCISSION OF A FORECLOSURE CONSULTING CONTRACT OR
13 FORECLOSURE RECONVEYANCE, THE HOMEOWNER SHALL REPAY, WITHIN SIXTY DAYS FROM
14 THE DATE OF RESCISSION, ANY MONIES PAID OR ADVANCED BY THE FORECLOSURE
15 CONSULTANT OR ANYONE WORKING WITH THE FORECLOSURE CONSULTANT UNDER THE TERMS
16 OF THE FORECLOSURE CONSULTING CONTRACT OR FORECLOSURE RECONVEYANCE, TOGETHER
17 WITH INTEREST CALCULATED AT THE RATE OF EIGHT PER CENT PER YEAR.

18 F. THE RIGHT TO RESCIND MAY NOT BE CONDITIONED ON THE REPAYMENT OF ANY
19 FUNDS.

20 44-7805. Foreclosure consulting contracts; requirements; notice
21 of rescission

22 A. A FORECLOSURE CONSULTING CONTRACT SHALL:

23 1. BE IN WRITING AND PROVIDED IN BLANK FORM AT THE FIRST MEETING OF
24 THE FORECLOSURE CONSULTANT AND HOMEOWNER AND BE PROVIDED TO THE HOMEOWNER FOR
25 REVIEW BEFORE SIGNING.

26 2. BE PRINTED IN AT LEAST TWELVE POINT TYPE AND WRITTEN IN THE SAME
27 LANGUAGE THAT IS USED BY THE HOMEOWNER AND THAT WAS USED IN DISCUSSIONS WITH
28 THE FORECLOSURE CONSULTANT TO DESCRIBE THE CONSULTANT'S SERVICES OR TO
29 NEGOTIATE THE CONTRACT.

30 3. FULLY DISCLOSE THE EXACT NATURE OF THE FORECLOSURE CONSULTING
31 SERVICES TO BE PROVIDED, INCLUDING ANY FORECLOSURE RECONVEYANCE THAT MAY BE
32 INVOLVED, AND THE TOTAL AMOUNT AND TERMS OF ANY COMPENSATION TO BE RECEIVED
33 BY THE FORECLOSURE CONSULTANT OR ANYONE WORKING IN ASSOCIATION WITH THE
34 CONSULTANT.

35 4. BE DATED AND PERSONALLY SIGNED BY THE HOMEOWNER AND THE FORECLOSURE
36 CONSULTANT AND BE WITNESSED AND ACKNOWLEDGED BY A NOTARY PUBLIC WHO IS
37 APPOINTED AND COMMISSIONED BY THE STATE.

38 5. CONTAIN THE FOLLOWING NOTICE THAT IS PRINTED IN AT LEAST FOURTEEN
39 POINT BOLDFACED TYPE, COMPLETED WITH THE NAME OF THE FORECLOSURE CONSULTANT
40 AND LOCATED IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED FOR THE HOMEOWNER'S
41 SIGNATURE:

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NOTICE REQUIRED BY ARIZONA LAW
_____(NAME)_____ OR ANYONE WORKING FOR HIM OR HER CANNOT
TAKE ANY MONEY FROM YOU OR ASK YOU FOR MONEY UNTIL
_____(NAME)_____ HAS COMPLETELY FINISHED DOING EVERYTHING
_____(NAME)_____ SAID HE OR SHE WOULD DO.
_____(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 PRECISE NATURE 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. YOU,
THE HOMEOWNER, MAY RESCIND THIS CONTRACT AT ANY TIME. IF A
TRANSFER OF THE DEED OR TITLE TO YOUR PROPERTY IS INVOLVED IN
ANY WAY, YOU MAY RESCIND THE TRANSFER ANY TIME WITHIN THREE 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 SIXTY DAYS, ANY MONEY SPENT ON YOUR BEHALF AS A
RESULT OF THIS AGREEMENT, ALONG WITH INTEREST CALCULATED AT THE
RATE OF 8% PER YEAR. THIS IS AN IMPORTANT LEGAL CONTRACT AND
COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY
BEFORE SIGNING.

B. THE CONTRACT SHALL CONTAIN ON THE FIRST PAGE, IN AT LEAST TWELVE
POINT TYPE:

- 1. THE NAME AND ADDRESS OF THE FORECLOSURE CONSULTANT TO WHICH THE
NOTICE OF CANCELLATION IS TO BE MAILED.
- 2. THE DATE THE HOMEOWNER SIGNED THE CONTRACT.

C. THE CONTRACT SHALL BE ACCOMPANIED BY A COMPLETED FORM IN DUPLICATE,
CAPTIONED "NOTICE OF RESCISSION". THE NOTICE OF RESCISSION SHALL:

- 1. BE ON A SEPARATE SHEET OF PAPER ATTACHED TO THE CONTRACT.
- 2. BE EASILY DETACHABLE.
- 3. CONTAIN THE FOLLOWING STATEMENT PRINTED IN AT LEAST FIFTEEN 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 FAX NUMBER AND ELECTRONIC MAIL
ADDRESS)_____. AS PART OF ANY RESCISSION, YOU, THE HOMEOWNER MUST

1 REPAY ANY MONEY SPENT ON YOUR BEHALF AS A RESULT OF THIS
2 AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH INTEREST CALCULATED AT
3 THE RATE OF 8% PER YEAR. THIS IS AN IMPORTANT LEGAL CONTRACT
4 AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY
5 BEFORE SIGNING. NOTICE OF RESCISSION TO:

6 (NAME OF FORECLOSURE CONSULTANT)
7 (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FAX NUMBER AND
8 ELECTRONIC MAIL ADDRESS)

9 I HEREBY RESCIND THIS CONTRACT.

10 (Date)

11 (HOMEOWNER'S SIGNATURE)

12 D. THE FORECLOSURE CONSULTANT SHALL PROVIDE THE HOMEOWNER WITH A
13 SIGNED AND DATED COPY OF THE CONTRACT AND THE ATTACHED NOTICE OF RESCISSION
14 IMMEDIATELY ON EXECUTION OF THE CONTRACT.

15 E. THE TIME DURING WHICH THE HOMEOWNER MAY RESCIND THE CONTRACT DOES
16 NOT BEGIN TO RUN UNTIL THE FORECLOSURE CONSULTANT HAS COMPLIED WITH THIS
17 SECTION.

18 F. ANY PROVISION IN A FORECLOSURE CONSULTING CONTRACT THAT ATTEMPTS OR
19 PURPORTS TO WAIVE ANY OF THE RIGHTS SPECIFIED IN THIS CHAPTER, CONSENT TO
20 JURISDICTION FOR LITIGATION OR CHOICE OF LAW IN A STATE OTHER THAN ARIZONA OR
21 CONSENT TO VENUE IN A COUNTY OTHER THAN THE COUNTY IN WHICH THE PROPERTY IS
22 LOCATED, OR TO IMPOSE ANY COSTS OR FILING FEES GREATER THAN THE FEES REQUIRED
23 TO FILE AN ACTION IN A COURT, IS VOID.

24 44-7806. Foreclosure consultants; prohibited acts

25 A FORECLOSURE CONSULTANT MAY NOT:

26 1. CLAIM, DEMAND, CHARGE, COLLECT OR RECEIVE ANY COMPENSATION UNTIL
27 AFTER THE FORECLOSURE CONSULTANT HAS FULLY PERFORMED EACH AND EVERY SERVICE
28 THE FORECLOSURE CONSULTANT CONTRACTED TO PERFORM OR REPRESENTED THAT THE
29 FORECLOSURE CONSULTANT WOULD PERFORM.

30 2. CLAIM, DEMAND, CHARGE, COLLECT OR RECEIVE ANY FEE, INTEREST OR ANY
31 OTHER COMPENSATION FOR ANY REASON THAT EXCEEDS EIGHT PER CENT PER YEAR OF THE
32 AMOUNT OF ANY LOAN THAT THE FORECLOSURE CONSULTANT MAKES TO THE HOMEOWNER
33 THAT EXCEEDS EIGHT PER CENT PER YEAR.

34 3. TAKE ANY WAGE ASSIGNMENT, ANY LIEN OF ANY TYPE ON REAL OR PERSONAL
35 PROPERTY OR ANY OTHER SECURITY TO SECURE THE PAYMENT OF COMPENSATION.

36 4. RECEIVE ANY CONSIDERATION FROM ANY THIRD PARTY IN CONNECTION WITH
37 FORECLOSURE CONSULTING SERVICES PROVIDED TO A HOMEOWNER UNLESS THE
38 CONSIDERATION IS FIRST FULLY DISCLOSED IN WRITING TO THE HOMEOWNER.

39 5. ACQUIRE ANY INTEREST, DIRECTLY OR INDIRECTLY, OR BY MEANS OF A
40 SUBSIDIARY, AFFILIATE OR CORPORATION IN WHICH THE FORECLOSURE CONSULTANT OR A
41 MEMBER OF THE FORECLOSURE CONSULTANT'S IMMEDIATE FAMILY IS A PRIMARY
42 STOCKHOLDER IN A RESIDENCE IN FORECLOSURE FROM A HOMEOWNER WITH WHOM THE
43 FORECLOSURE CONSULTANT HAS CONTRACTED.

44 6. TAKE ANY POWER OF ATTORNEY FROM A HOMEOWNER FOR ANY PURPOSE EXCEPT
45 TO INSPECT DOCUMENTS AS PROVIDED BY LAW.

1 IF YOU CHANGE YOUR MIND ABOUT TRANSFERRING OWNERSHIP OF YOUR
2 PROPERTY, YOU, THE HOMEOWNER, MAY RESCIND THE TRANSFER OF THE
3 DEED OR TITLE TO YOUR PROPERTY ANY TIME WITHIN THE NEXT THREE
4 DAYS. AS PART OF ANY RESCISSION, YOU MUST REPAY, WITHIN SIXTY
5 DAYS, ANY MONEY SPENT ON YOUR BEHALF AS A RESULT OF THIS
6 AGREEMENT, ALONG WITH INTEREST CALCULATED AT THE RATE OF 8% PER
7 YEAR. THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN
8 THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.

9 C. IF A FORECLOSURE RECONVEYANCE IS INCLUDED IN A FORECLOSURE
10 CONSULTING CONTRACT OR ARRANGED AFTER THE EXECUTION OF A FORECLOSURE
11 CONSULTING CONTRACT, THE FORECLOSURE PURCHASER SHALL PROVIDE THE HOMEOWNER
12 WITH A DOCUMENT ENTITLED "NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR
13 TITLE". THE NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE SHALL:

- 14 1. BE A SEPARATE DOCUMENT AND NOT PRINTED ON THE BACK OF ANY OTHER
15 DOCUMENT.
- 16 2. CONTAIN THE FOLLOWING STATEMENT PRINTED IN AT LEAST FOURTEEN POINT
17 TYPE:

18 NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE
19 _____
(DATE)

20 YOU MAY CANCEL OR RESCIND THE TRANSFER OF OWNERSHIP OF YOUR
21 PROPERTY THROUGH THE TRANSFER OF A DEED OR TITLE WITHIN THREE
22 BUSINESS DAYS AFTER THE DATE YOU SIGN THIS DOCUMENT. TO RESCIND
23 THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF
24 THIS NOTICE, OR ANY OTHER WRITTEN NOTICE EXPRESSING A SIMILAR
25 INTENT TO _____ (NAME OF FORECLOSURE CONSULTANT) _____ AT _____ (ADDRESS OF
26 FORECLOSURE CONSULTANT, INCLUDING FAX NUMBER AND ELECTRONIC MAIL
27 ADDRESS) _____. AS PART OF ANY RESCISSION, YOU, THE HOMEOWNER, MUST
28 REPAY ANY MONEY SPENT ON YOUR BEHALF AS A RESULT OF THIS
29 AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH INTEREST CALCULATED AT
30 THE RATE OF 8% PER YEAR. THIS IS AN IMPORTANT LEGAL CONTRACT
31 AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY
32 BEFORE SIGNING.

33 NOTICE OF RESCISSION

34 TO: _____ (NAME OF FORECLOSURE CONSULTANT) _____
35 _____ (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FAX NUMBER
36 AND ELECTRONIC MAIL ADDRESS) _____

37 I HEREBY RESCIND THE TRANSFER OF DEED OR TITLE TO MY PROPERTY.
38 PLEASE RETURN ALL EXECUTED DOCUMENTS TO ME.

39 _____
40 (DATE)
_____ (HOMEOWNER'S SIGNATURE)

41 D. THE FORECLOSURE PURCHASER SHALL PROVIDE THE HOMEOWNER WITH A COPY
42 OF THE NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE IMMEDIATELY ON
43 EXECUTION OF ANY DOCUMENT THAT INCLUDES A FORECLOSURE RECONVEYANCE.

1 E. THE TIME DURING WHICH THE HOMEOWNER MAY RESCIND THE CONTRACT OR
2 TRANSFER DOES NOT BEGIN TO RUN UNTIL THE FORECLOSURE PURCHASER HAS COMPLIED
3 WITH THIS SECTION.

4 F. ANY PROVISION IN A FORECLOSURE CONSULTING CONTRACT OR OTHER
5 AGREEMENT CONCERNING A FORECLOSURE RECONVEYANCE THAT ATTEMPTS OR PURPORTS TO
6 WAIVE THE HOMEOWNER'S RIGHTS UNDER THIS SECTION, CONSENT TO JURISDICTION FOR
7 LITIGATION OR CHOICE OF LAW IN A STATE OTHER THAN ARIZONA OR CONSENT TO VENUE
8 IN A COUNTY OTHER THAN THE COUNTY IN WHICH THE PROPERTY IS LOCATED, OR TO
9 IMPOSE ANY COSTS OR FILING FEES GREATER THAN THE FEES REQUIRED TO FILE AN
10 ACTION IN A COURT, IS VOID.

11 G. A FORECLOSURE RECONVEYANCE MAY NOT BE CARRIED OUT USING A POWER OF
12 ATTORNEY FROM THE HOMEOWNER.

13 H. A NOTICE OF RESCISSION NEED NOT TAKE THE PARTICULAR FORM SPECIFIED
14 IN THIS CHAPTER OR ANY FORM CONTAINED IN ANY AGREEMENT WITH THE FORECLOSURE
15 CONSULTANT OR FORECLOSURE PURCHASER AND IS EFFECTIVE, HOWEVER EXPRESSED, IF
16 IT INDICATES THE INTENTION OF THE HOMEOWNER TO RESCIND THE RECONVEYANCE
17 AGREEMENT.

18 I. THE RIGHT TO RESCIND MAY NOT BE CONDITIONED ON THE REPAYMENT OF ANY
19 MONIES.

20 J. WITHIN TEN DAYS AFTER RECEIPT OF A NOTICE OF RESCISSION GIVEN IN
21 ACCORDANCE WITH THIS CHAPTER, THE FORECLOSURE PURCHASER SHALL RETURN, WITHOUT
22 CONDITION, ANY ORIGINAL DEED, TITLE, CONTRACT AND ANY OTHER DOCUMENT SIGNED
23 BY THE HOMEOWNER.

24 K. DURING THE THREE DAY RESCISSION PERIOD, A DEED OR OTHER DOCUMENT
25 EFFECTING TITLE TO THE HOMEOWNER'S RESIDENCE MAY NOT BE RECORDED. ANY DEED
26 THAT IS RECORDED AFTER THE THREE DAY PERIOD SHALL CONTAIN AN AFFIDAVIT OF
27 COMPLIANCE WITH THIS SECTION SIGNED BY AN ATTORNEY ADMITTED TO PRACTICE LAW
28 IN THIS STATE.

29 44-7808. Foreclosure purchaser; prohibited acts; rebuttable
30 presumption; accounting; definitions

31 A. A FORECLOSURE PURCHASER MAY NOT:

32 1. ENTER INTO, OR ATTEMPT TO ENTER INTO, A FORECLOSURE RECONVEYANCE
33 WITH A HOMEOWNER UNLESS ALL OF THE FOLLOWING APPLY:

34 (a) THE FORECLOSURE PURCHASER VERIFIES AND CAN DEMONSTRATE THAT THE
35 HOMEOWNER HAS OR WILL HAVE A REASONABLE ABILITY TO PAY FOR THE SUBSEQUENT
36 RECONVEYANCE OF THE PROPERTY BACK TO THE HOMEOWNER ON COMPLETION OF THE TERMS
37 OF A FORECLOSURE CONVEYANCE OR, IF THE FORECLOSURE CONVEYANCE PROVIDES FOR A
38 LEASE WITH AN OPTION TO REPURCHASE THE PROPERTY, THE HOMEOWNER HAS OR WILL
39 HAVE A REASONABLE ABILITY TO MAKE THE LEASE PAYMENTS AND REPURCHASE THE
40 PROPERTY WITHIN THE TERM OF THE OPTION TO REPURCHASE.

41 (b) THE FORECLOSURE PURCHASER AND THE HOMEOWNER COMPLETE A FORMAL
42 SETTLEMENT BEFORE ANY TRANSFER OF AN INTEREST IN THE PROPERTY IS EFFECTED.

43 (c) THE FORECLOSURE PURCHASER COMPLIES WITH THE REQUIREMENTS OF THE
44 HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994 (P.L. 103-325; 108 STAT.
45 2190; 15 UNITED STATES CODE SECTION 1639) AND ITS IMPLEMENTING REGULATIONS

1 FOR ANY FORECLOSURE RECONVEYANCE IN WHICH THE HOMEOWNER OBTAINS A VENDEE
2 INTEREST IN A CONTRACT FOR DEED.

3 2. FAIL TO EITHER:

4 (a) ENSURE THAT TITLE TO THE PROPERTY HAS BEEN RECONVEYED TO THE
5 HOMEOWNER IN A TIMELY MANNER IF THIS CHAPTER OR THE TERMS OF A FORECLOSURE
6 RECONVEYANCE AGREEMENT REQUIRE A RECONVEYANCE.

7 (b) MAKE PAYMENT TO THE HOMEOWNER WITHIN NINETY DAYS AFTER ANY RESALE
8 OF THE PROPERTY SO THAT THE HOMEOWNER RECEIVES CASH PAYMENTS OR CONSIDERATION
9 IN AN AMOUNT EQUAL TO AT LEAST EIGHTY-TWO PER CENT OF THE NET PROCEEDS FROM
10 ANY RESALE OF THE PROPERTY IF A PROPERTY SUBJECT TO A FORECLOSURE
11 RECONVEYANCE IS SOLD WITHIN EIGHTEEN MONTHS AFTER ENTERING INTO A FORECLOSURE
12 RECONVEYANCE AGREEMENT.

13 3. ENTER INTO REPURCHASE OR LEASE TERMS AS PART OF THE FORECLOSURE
14 CONVEYANCE THAT ARE UNFAIR OR COMMERCIALY UNREASONABLE OR ENGAGE IN ANY
15 OTHER UNFAIR CONDUCT.

16 4. REPRESENT, DIRECTLY OR INDIRECTLY, ANY OF THE FOLLOWING:

17 (a) THAT THE FORECLOSURE PURCHASER IS ACTING AS AN ADVISOR OR A
18 CONSULTANT, OR IN ANY OTHER MANNER REPRESENT THAT THE FORECLOSURE PURCHASER
19 IS ACTING ON BEHALF OF THE HOMEOWNER.

20 (b) THAT THE FORECLOSURE PURCHASER HAS CERTIFICATION OR LICENSURE THAT
21 THE FORECLOSURE PURCHASER DOES NOT HAVE.

22 (c) THAT THE FORECLOSURE PURCHASER IS ASSISTING THE HOMEOWNER TO "SAVE
23 THE HOUSE" OR USE A SUBSTANTIALLY SIMILAR PHRASE.

24 (d) THAT THE FORECLOSURE PURCHASER IS ASSISTING THE HOMEOWNER IN
25 PREVENTING A FORECLOSURE IF THE RESULT OF THE TRANSACTION IS THAT THE
26 HOMEOWNER WILL NOT COMPLETE A REDEMPTION OF THE PROPERTY.

27 5. MAKE ANY OTHER STATEMENTS, DIRECTLY OR BY IMPLICATION, OR ENGAGE IN
28 ANY OTHER CONDUCT THAT IS FALSE, DECEPTIVE OR MISLEADING OR THAT HAS THE
29 LIKELIHOOD TO CAUSE CONFUSION OR MISUNDERSTANDING, INCLUDING STATEMENTS
30 REGARDING THE VALUE OF THE RESIDENCE IN FORECLOSURE, THE AMOUNT OF PROCEEDS
31 THE HOMEOWNER WILL RECEIVE AFTER A FORECLOSURE SALE, ANY CONTRACT TERM OR THE
32 HOMEOWNER'S RIGHTS OR OBLIGATIONS INCIDENT TO OR ARISING OUT OF THE
33 FORECLOSURE RECONVEYANCE.

34 6. UNTIL THE HOMEOWNER'S RIGHT TO RESCIND OR CANCEL THE TRANSACTION
35 HAS EXPIRED, EITHER:

36 (a) RECORD ANY DOCUMENT, INCLUDING AN INSTRUMENT OF CONVEYANCE, SIGNED
37 BY THE HOMEOWNER.

38 (b) TRANSFER OR ENCUMBER OR PURPORT TO TRANSFER OR ENCUMBER ANY
39 INTEREST IN THE RESIDENCE IN FORECLOSURE TO ANY THIRD PARTY.

40 B. FOR THE PURPOSES OF SUBSECTION A, PARAGRAPH 1, THERE IS A
41 REBUTTABLE PRESUMPTION THAT BOTH OF THE FOLLOWING ARE TRUE:

42 1. A HOMEOWNER HAS A REASONABLE ABILITY TO PAY FOR A SUBSEQUENT
43 RECONVEYANCE OF THE PROPERTY IF THE HOMEOWNER'S PAYMENTS FOR PRIMARY HOUSING
44 EXPENSES AND REGULAR PRINCIPAL AND INTEREST PAYMENTS ON OTHER PERSONAL DEBT,

1 ON A MONTHLY BASIS, DO NOT EXCEED SIXTY PER CENT OF THE HOMEOWNER'S MONTHLY
2 GROSS INCOME.

3 2. THE FORECLOSURE PURCHASER HAS NOT VERIFIED REASONABLE PAYMENT
4 ABILITY IF THE FORECLOSURE PURCHASER HAS NOT OBTAINED DOCUMENTS OTHER THAN A
5 STATEMENT BY THE HOMEOWNER OF ASSETS, LIABILITIES AND INCOME.

6 C. THE FORECLOSURE PURCHASER SHALL MAKE A DETAILED ACCOUNTING OF THE
7 BASIS FOR THE AMOUNT OF A PAYMENT MADE TO THE HOMEOWNER OF A PROPERTY RESOLD
8 WITHIN EIGHTEEN MONTHS AFTER ENTERING INTO A FORECLOSURE RECONVEYANCE
9 AGREEMENT, IN ACCORDANCE WITH SUBSECTION A, PARAGRAPH 2, SUBDIVISION (b).
10 THE ACCOUNTING SHALL BE ON A FORM PRESCRIBED BY THE ATTORNEY GENERAL IN
11 CONSULTATION WITH THE SUPERINTENDENT OF THE DEPARTMENT OF FINANCIAL
12 INSTITUTIONS AND SHALL INCLUDE DETAILED DOCUMENTATION OF EXPENSES AND OTHER
13 CONSIDERATION PAID BY THE FORECLOSURE PURCHASER AND DEDUCTED FROM THE RESALE
14 PRICE.

15 D. A BONA FIDE PURCHASER FOR VALUE OR BONA FIDE LENDER FOR VALUE WHO
16 ENTERS INTO A TRANSACTION WITH A HOMEOWNER OR A FORECLOSURE PURCHASER WHEN A
17 FORECLOSURE CONSULTING CONTRACT IS IN EFFECT OR DURING THE PERIOD WHEN A
18 FORECLOSURE RECONVEYANCE MAY BE RESCINDED, WITHOUT NOTICE OF THOSE FACTS,
19 RECEIVES GOOD TITLE TO THE PROPERTY, FREE AND CLEAR OF THE RIGHT OF THE
20 PARTIES TO THE FORECLOSURE CONSULTING CONTRACT OR THE RIGHT OF THE HOMEOWNER
21 TO RESCIND THE FORECLOSURE RECONVEYANCE.

22 E. THIS CHAPTER DOES NOT IMPOSE ANY DUTY ON A PURCHASER, TITLE INSURER
23 OR TITLE INSURANCE PRODUCER WITH RESPECT TO THE APPLICATION OF THE PROCEEDS
24 OF A SALE OF PROPERTY BY A FORECLOSURE PURCHASER.

25 F. FOR THE PURPOSES OF THIS SECTION:

26 1. "PRIMARY HOUSING EXPENSES" MEANS THE TOTAL AMOUNT REQUIRED TO PAY
27 REGULAR PRINCIPAL, INTEREST, RENT, UTILITIES, HAZARD INSURANCE, REAL ESTATE
28 TAXES AND ASSOCIATION DUES ON A PROPERTY.

29 2. "RESALE" MEANS A BONA FIDE MARKET SALE OF PROPERTY SUBJECT TO A
30 FORECLOSURE RECONVEYANCE BY THE FORECLOSURE PURCHASER TO AN UNAFFILIATED
31 THIRD PARTY.

32 3. "RESALE PRICE" MEANS THE GROSS SALE PRICE OF A PROPERTY ON RESALE.

33 4. "SETTLEMENT" MEANS EITHER:

34 (a) AN IN-PERSON MEETING TO COMPLETE FINAL DOCUMENTS INCIDENT TO THE
35 SALE OR TRANSFER OF REAL PROPERTY OR THE CREATION OF A MORTGAGE ON REAL
36 PROPERTY CONDUCTED BY A SETTLEMENT AGENT WHO IS NOT EMPLOYED BY OR AN
37 AFFILIATE OF THE FORECLOSURE PURCHASER.

38 (b) AN IN-PERSON, FACE-TO-FACE MEETING WITH THE HOMEOWNER TO COMPLETE
39 FINAL DOCUMENTS INCIDENT TO THE SALE OR TRANSFER OF REAL PROPERTY OR THE
40 CREATION OF A MORTGAGE OR EQUITABLE INTEREST IN REAL PROPERTY CONDUCTED BY A
41 SETTLEMENT AGENT WHO IS NOT EMPLOYED BY OR AN AFFILIATE OF THE FORECLOSURE
42 PURCHASER, DURING WHICH THE HOMEOWNER MUST BE PRESENTED WITH A COMPLETED COPY
43 OF THE HUD-1 SETTLEMENT FORM.

1 44-7809. Foreclosure surplus acquisition contract:
2 requirements: notice

3 A. EACH FORECLOSURE SURPLUS ACQUISITION SHALL BE IN THE FORM OF A
4 WRITTEN CONTRACT.

5 B. EACH FORECLOSURE SURPLUS ACQUISITION CONTRACT SHALL MEET ALL OF THE
6 FOLLOWING REQUIREMENTS:

7 1. CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES.

8 2. BE PRINTED IN AT LEAST TWELVE POINT TYPE IN THE SAME LANGUAGE THAT
9 IS USED BY THE HOMEOWNER AND THAT WAS USED BY THE FORECLOSURE SURPLUS
10 PURCHASER AND THE HOMEOWNER TO NEGOTIATE THE SALE OF THE RESIDENCE IN
11 FORECLOSURE.

12 3. BE FULLY COMPLETED, DATED AND PERSONALLY SIGNED BY THE HOMEOWNER
13 AND THE FORECLOSURE SURPLUS PURCHASER BEFORE THE STATEMENT OF ACCOUNT HAS
14 BEEN REFERRED TO THE AUDITOR.

15 4. INCLUDE ALL OF THE FOLLOWING:

16 (a) THE NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE FORECLOSURE
17 SURPLUS PURCHASER.

18 (b) THE ADDRESS OF THE RESIDENCE IN FORECLOSURE.

19 (c) THE TOTAL CONSIDERATION TO BE GIVEN BY THE FORECLOSURE SURPLUS
20 PURCHASER IN CONNECTION WITH OR INCIDENT TO THE TRANSACTION.

21 (d) A COMPLETE DESCRIPTION OF THE TERMS OF PAYMENT OR OTHER
22 CONSIDERATION, INCLUDING ANY SERVICES OF ANY NATURE THAT THE FORECLOSURE
23 SURPLUS PURCHASER REPRESENTS THE FORECLOSURE SURPLUS PURCHASER WILL PERFORM
24 FOR THE HOMEOWNER BEFORE OR AFTER THE SALE.

25 (e) THE FOLLOWING NOTICE, WHICH IS PRINTED IN AT LEAST FOURTEEN POINT
26 BOLD FACED TYPE, COMPLETED WITH THE NAME OF THE FORECLOSURE SURPLUS PURCHASER
27 AND LOCATED IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED FOR THE HOMEOWNER'S
28 SIGNATURE:

29 NOTICE REQUIRED BY ARIZONA LAW
30 UNTIL YOUR RIGHT TO RESCIND THIS CONTRACT HAS ENDED,
31 (NAME) OR ANYONE WORKING FOR (NAME)
32 CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED, CHECK, OR ANY
33 OTHER DOCUMENT. IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT,
34 SEEK LEGAL COUNSEL BEFORE SIGNING. THIS IS AN IMPORTANT LEGAL
35 CONTRACT. FAILURE TO READ AND UNDERSTAND THESE DOCUMENTS MAY
36 CAUSE YOU TO LOSE VALUABLE RIGHTS. THE EFFECT OF THESE
37 DOCUMENTS IS THAT YOU MAY LOSE THE EQUITY IN YOUR HOME. THIS
38 AGREEMENT WILL NOT STOP THE FORECLOSURE OR GET YOUR HOUSE BACK.
39 IF YOU BELIEVE THE FORECLOSURE SALE WAS IMPROPER, YOU SHOULD
40 IMMEDIATELY SEEK LEGAL ADVICE TO DETERMINE WHAT OBJECTIONS TO
41 RATIFICATION OR TO RESCIND THE ORDER OF RATIFICATION MAY BE
42 FILED. IF YOU HAVE SIGNED THIS DOCUMENT, RETAIN ALL MONIES
43 RECEIVED AND PROMPTLY SEEK LEGAL ADVICE. YOU MAY RESCIND THIS
44 CONTRACT FOR THE SALE OF YOUR HOUSE WITHOUT ANY PENALTY OR
45 OBLIGATION AT ANY TIME WITHIN TEN DAYS AFTER THE AUDITOR STATES

1 THE ACCOUNT OF THE FORECLOSURE SALE. SEE THE ATTACHED NOTICE OF
2 RESCISSION FORM FOR AN EXPLANATION OF THIS RIGHT. AS PART OF
3 THE RESCISSION, YOU MUST REPAY FROM THE SURPLUS PROCEEDS ANY
4 CONSIDERATION RECEIVED, DIRECTLY OR INDIRECTLY, TOGETHER WITH AN
5 AMOUNT FOR INTEREST CALCULATED AT THE RATE OF 8% PER YEAR. THIS
6 IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF
7 YOUR EQUITY IN YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.

8 C. THE CONTRACT SHALL BE ACCOMPANIED BY A COMPLETED FORM IN DUPLICATE,
9 CAPTIONED "NOTICE OF RESCISSION". THE NOTICE OF RESCISSION SHALL:

- 10 1. BE ON A SEPARATE SHEET OF PAPER ATTACHED TO THE CONTRACT.
- 11 2. BE EASILY DETACHABLE.
- 12 3. CONTAIN THE FOLLOWING STATEMENT PRINTED IN AT LEAST FIFTEEN POINT

13 TYPE:

14 NOTICE OF RESCISSION
15 _____
(DATE OF CONTRACT)
16 YOU MAY RESCIND THIS CONTRACT FOR THE SALE OF YOUR HOUSE AT ANY
17 TIME WITHIN TEN DAYS AFTER THE AUDITOR STATES THE ACCOUNT OF THE
18 FORECLOSURE SALE. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A
19 SIGNED AND DATED COPY OF THIS NOTICE OF RESCISSION TO
20 _____
(NAME OF PURCHASER) AT _____
(ADDRESS OF PURCHASER,
21 INCLUDING FAX NUMBER AND ELECTRONIC MAIL ADDRESS) WITH A COPY
22 TO THE COURT-APPOINTED AUDITOR.
23 I HEREBY RESCIND THIS TRANSACTION.
24 _____
(DATE)
25 _____
(HOMEOWNER'S SIGNATURE)

26 D. THE FORECLOSURE SURPLUS PURCHASER SHALL PROVIDE THE HOMEOWNER WITH
27 A COPY OF THE CONTRACT AND THE ATTACHED NOTICE OF RESCISSION AT THE TIME THE
28 CONTRACT IS EXECUTED BY ALL PARTIES.

29 E. THE CONTRACT REQUIRED BY THIS SECTION SURVIVES DELIVERY OF ANY
30 INSTRUMENT OF CONVEYANCE OF THE RESIDENCE IN FORECLOSURE, IS BINDING IN THE
31 AUDIT AND HAS NO EFFECT ON PERSONS OTHER THAN THE PARTIES TO THE CONTRACT.

32 F. ANY PROVISION IN A CONTRACT THAT ATTEMPTS OR PURPORTS TO WAIVE ANY
33 OF THE RIGHTS SPECIFIED IN THIS CHAPTER, CONSENT TO JURISDICTION OR CHOICE OF
34 LAW IN A STATE OTHER THAN THIS STATE OR CONSENT TO VENUE IN A COUNTY OTHER
35 THAN THE COUNTY IN WHICH THE PROPERTY IS LOCATED, OR TO IMPOSE ANY COSTS OR
36 FILING FEES GREATER THAN THE FEES REQUIRED TO FILE AN ACTION IN A COURT, IS
37 VOID.

38 44-7810. Right of rescission; contract with foreclosure surplus
39 purchaser; notice

40 A. IN ADDITION TO ANY OTHER RIGHT OF RESCISSION, A HOMEOWNER HAS THE
41 RIGHT TO RESCIND ANY CONTRACT WITH A FORECLOSURE SURPLUS PURCHASER AT ANY
42 TIME WITHIN TEN DAYS AFTER THE STATEMENT OF AUDIT ACCOUNT OF THE FORECLOSURE
43 SALE.

1 B. RESCISSION OCCURS WHEN THE HOMEOWNER DELIVERS, BY ANY MEANS,
2 WRITTEN NOTICE OF RESCISSION TO THE ADDRESS SPECIFIED IN THE CONTRACT, WITH A
3 COPY TO THE AUDITOR. AS PART OF THE RESCISSION, THE HOMEOWNER SHALL REPAY
4 ANY CONSIDERATION RECEIVED, DIRECTLY OR INDIRECTLY, TOGETHER WITH INTEREST
5 CALCULATED AT THE RATE OF EIGHT PER CENT PER YEAR. ON RECEIPT OF THE NOTICE
6 OF RESCISSION, THE AUDITOR SHALL RESTATE THE ACCOUNT. THE REPAYMENT OF
7 CONSIDERATION AND INTEREST BY THE HOMEOWNER SHALL BE INCORPORATED BY THE
8 AUDITOR INTO THE REVISED STATEMENT OF ACCOUNT FILED WITH THE COURT. ON
9 RATIFICATION OF THE AMENDED AUDIT, THE ATTORNEY NAMED IN THE MORTGAGE,
10 MORTGAGE ASSIGNEE FOR PURPOSES OF FORECLOSURE, TRUSTEE OR SUBSTITUTE TRUSTEE
11 IN MAKING DISTRIBUTION OF THE SURPLUS FUNDS SHALL COMPLY WITH THE REVISED
12 COURT-APPROVED AUDIT.

13 C. A NOTICE OF RESCISSION GIVEN BY A HOMEOWNER NEED NOT BE IN THE FORM
14 PROVIDED WITH THE CONTRACT AND IS EFFECTIVE, HOWEVER EXPRESSED, IF IT
15 INDICATES THE INTENTION OF THE HOMEOWNER TO RESCIND THE CONTRACT.

16 D. THE RIGHT TO RESCIND MAY NOT BE CONDITIONED ON THE REPAYMENT OF ANY
17 MONIES.

18 E. WITHIN TEN DAYS AFTER RECEIPT OF A NOTICE OF RESCISSION GIVEN IN
19 ACCORDANCE WITH THIS SECTION, THE FORECLOSURE SURPLUS PURCHASER SHALL RETURN,
20 WITHOUT CONDITION, THE ORIGINAL CONTRACT AND ALL OTHER DOCUMENTS SIGNED BY
21 THE HOMEOWNER.

22 44-7811. Waiver of homeowner's rights prohibited

23 A. A PERSON MAY NOT INDUCE OR ATTEMPT TO INDUCE A HOMEOWNER TO WAIVE
24 THE HOMEOWNER'S RIGHTS UNDER THIS CHAPTER.

25 B. ANY WAIVER BY A HOMEOWNER OF THIS CHAPTER IS VOID AND UNENFORCEABLE
26 AS CONTRARY TO PUBLIC POLICY.

27 44-7812. Injunction; court order or judgment

28 A. THE ATTORNEY GENERAL MAY SEEK AN INJUNCTION TO PROHIBIT A PERSON
29 WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS CHAPTER FROM ENGAGING
30 OR CONTINUING TO ENGAGE IN THE VIOLATION.

31 B. THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY TO DO ANY OF
32 THE FOLLOWING:

- 33 1. PREVENT THE USE BY A PERSON OF ANY PROHIBITED PRACTICE.
- 34 2. RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL PROPERTY ACQUIRED
35 FROM THE PERSON BY MEANS OF ANY PROHIBITED PRACTICE.
- 36 3. APPOINT A RECEIVER IN CASE OF WILFUL VIOLATION OF THIS CHAPTER.

37 C. IN ANY ACTION BROUGHT BY THE ATTORNEY GENERAL UNDER THIS SECTION,
38 THE ATTORNEY GENERAL IS ENTITLED TO RECOVER THE COSTS OF THE ACTION FOR THE
39 USE OF THIS STATE.

40 44-7813. Damages; attorney fees

41 A. IN ADDITION TO ANY ACTION BY THE ATTORNEY GENERAL AUTHORIZED UNDER
42 THIS CHAPTER AND ANY OTHER ACTION OTHERWISE AUTHORIZED BY LAW, A HOMEOWNER
43 MAY BRING AN ACTION FOR DAMAGES INCURRED AS THE RESULT OF A PRACTICE
44 PROHIBITED BY THIS CHAPTER.

1 B. A HOMEOWNER WHO BRINGS AN ACTION UNDER THIS SECTION AND WHO IS
2 AWARDED DAMAGES MAY ALSO SEEK, AND THE COURT MAY AWARD, REASONABLE ATTORNEY
3 FEES.

4 C. IF THE COURT FINDS THAT THE DEFENDANT WILFULLY OR KNOWINGLY
5 VIOLATED THIS CHAPTER, THE COURT MAY AWARD DAMAGES EQUAL TO THREE TIMES THE
6 AMOUNT OF ACTUAL DAMAGES.

7 44-7814. Violation; classification

8 A PERSON WHO VIOLATES THIS CHAPTER IS GUILTY OF A CLASS 1 MISDEMEANOR.

9 Sec. 2. Emergency

10 This act is an emergency measure that is necessary to preserve the
11 public peace, health or safety and is operative immediately as provided by
12 law.