

REFERENCE TITLE: foreclosure; equity purchasers; mortgage consultants

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2327

Introduced by
Representatives Tovar, Miranda C, Miranda R: Alston, Campbell

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, WHO PROVIDES THE EQUITY PURCHASER WITH
10 A MORTGAGE OR DEED OF TRUST OR WHO PROVIDES A SUBSEQUENT BONA FIDE PURCHASER
11 WITH A MORTGAGE OR DEED OF TRUST IF THE BONA FIDE PURCHASER OR ENCUMBRANCER
12 HAD NO NOTICE OF THE EQUITY SELLER'S CONTINUING RIGHT TO OR EQUITY IN THE
13 PROPERTY BEFORE THE ACQUISITION OF TITLE OR ENCUMBRANCE, OF THE FACTS DEEMING
14 THE DEED OR CONVEYANCE TO BE A MORTGAGE LOAN TRANSACTION OR OF ANY VIOLATION
15 OF THIS ARTICLE RELATED TO THE PROPERTY BY THE EQUITY PURCHASER.

16 2. "BUSINESS DAY" MEANS ANY CALENDAR DAY EXCLUDING SATURDAY, SUNDAY OR
17 OTHER 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 OR 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 TO PERFORM FOR COMPENSATION OR WHO, FOR COMPENSATION, PERFORMS ANY SERVICE
17 THAT THE PERSON IN ANY MANNER REPRESENTS WILL IN ANY MANNER DO ANY OF THE
18 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" MEAN 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:

25 1. THE NAME, BUSINESS ADDRESS AND 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 IS TO BE VACATED
40 BY THE 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 OF THIS
44 SECTION.

1 9. THE FOLLOWING NOTICE, WHICH MUST CONTAIN THE NAME OF THE EQUITY
2 PURCHASER AND THE DATE AND TIME BY WHICH THE COVERED CONTRACT MAY BE
3 CANCELED, MUST BE COMPLETED BY THE EQUITY PURCHASER AND APPEAR ON THE
4 CONTRACT IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED FOR THE EQUITY SELLER'S
5 SIGNATURE AND MUST BE IN AT LEAST FOURTEEN-POINT BOLDFACE TYPE IF THE COVERED
6 CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF THE COVERED CONTRACT IS TYPED:

7 NOTICE REQUIRED BY ARIZONA LAW

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

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

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

1 CANCELLATION OF THE CONTRACT SHALL RELEASE THE EQUITY SELLER FROM 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 (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 (DATE) . TO CANCEL THIS TRANSACTION, PERSONALLY
16 DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE, OR
17 SEND IT BY FAX, UNITED STATES MAIL OR AN ESTABLISHED COMMERCIAL
18 LETTER DELIVERY SERVICE, INDICATING CANCELLATION TO (NAME OF
19 PURCHASER) , AT (STREET ADDRESS OF PURCHASER'S PLACE OF
20 BUSINESS AND FAX NUMBER, IF ANY) NOT LATER THAN MIDNIGHT OF
21 (DATE) . IF YOU WISH TO CANCEL THIS CONTRACT, SIGN AND DATE
22 BOTH COPIES OF THIS NOTICE OF CANCELLATION 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 THE EQUITY PURCHASER:
22 1. IS ACTING AS AN ADVISOR OR A CONSULTANT FOR OR IN ANY OTHER MANNER
23 ACTING ON BEHALF OF THE EQUITY SELLER.
24 2. IS CERTIFIED OR LICENSED IF THIS IS NOT TRUE, OR IS NOT LICENSED IF
25 THE EQUITY PURCHASER IS ACTUALLY LICENSED.
26 3. IS ASSISTING THE EQUITY SELLER TO SAVE THE HOUSE UNLESS THE EQUITY
27 PURCHASER HAS A GOOD FAITH AND REASONABLE BASIS FOR THE REPRESENTATION.
28 4. IS ASSISTING THE EQUITY SELLER IN PREVENTING A COMPLETED
29 FORECLOSURE OR TRUSTEE'S SALE UNLESS THE EQUITY PURCHASER HAS A GOOD FAITH
30 AND REASONABLE BASIS FOR THE REPRESENTATION.
31 D. AN EQUITY PURCHASER SHALL NOT:
32 1. INITIATE, ENTER INTO, NEGOTIATE OR CONSUMMATE ANY COVERED CONTRACT
33 INVOLVING RESIDENTIAL REAL PROPERTY IN FORECLOSURE OR SUBJECT TO A TRUSTEE'S
34 SALE, OR, IF APPLICABLE, IN DEFAULT IF THE EQUITY PURCHASER, BY THE TERMS OF
35 THE COVERED CONTRACT, TAKES UNCONSCIONABLE ADVANTAGE OF THE EQUITY SELLER.
36 2. OPERATE IN THIS STATE WITHOUT A LICENSE ISSUED PURSUANT TO TITLE 6,
37 CHAPTER 9, ARTICLE 1 OR 2, UNLESS OTHERWISE PROVIDED BY LAW.
38 E. AN EQUITY SELLER MAY BRING AN ACTION FOR THE RECOVERY OF DAMAGES OR
39 EQUITABLE RELIEF AGAINST AN EQUITY PURCHASER FOR A VIOLATION OF SECTION
40 33-762, SUBSECTION A, B OR E, SECTION 33-764 OR THIS SECTION. A COURT MAY
41 AWARD TO A PREVAILING EQUITY SELLER ACTUAL DAMAGES PLUS REASONABLE ATTORNEY
42 FEES AND COSTS. IN ADDITION, THE COURT MAY AWARD EQUITABLE RELIEF OR
43 INCREASE THE AWARD IN AN AMOUNT NOT TO EXCEED THREE TIMES THE EQUITY SELLER'S
44 ACTUAL DAMAGES, OR BOTH, IF THE COURT DEEMS SUCH AN AWARD PROPER. ANY ACTION

1 BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED WITHIN SIX YEARS AFTER
2 THE DATE OF THE ALLEGED VIOLATION.

3 F. ANY EQUITY PURCHASER WHO:

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

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

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

16 (a) ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMPLIANCE
17 FAILURE WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR
18 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID
19 SUCH ERRORS. FOR THE PURPOSES OF THIS SUBDIVISION, "BONA FIDE ERRORS"
20 INCLUDES A CLERICAL, CALCULATION, COMPUTER MALFUNCTION OR PROGRAMMING AND
21 PRINTING ERROR, BUT DOES NOT INCLUDE AN ERROR OF LEGAL JUDGMENT WITH RESPECT
22 TO A PERSON'S OBLIGATIONS UNDER THIS ARTICLE OR A FAILURE TO PROVIDE NOTICES
23 OR OTHER MATERIAL INFORMATION REQUIRED BY THIS ARTICLE.

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

26 (c) MAKES APPROPRIATE RESTITUTION TO THE EQUITY SELLER AND APPROPRIATE
27 ADJUSTMENTS TO THE TRANSACTION WITHIN NINETY DAYS AFTER THE CONTRACT DATE.

28 33-764. Mortgage loan transaction; reconveyance; requirements;
29 definitions

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

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

43 C. AN EQUITY PURCHASER SHALL NOT ENTER INTO A RECONVEYANCE ARRANGEMENT
44 UNLESS:

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

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

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

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

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

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

36 F. AS PART OF A RECONVEYANCE ARRANGEMENT, AN EQUITY PURCHASER SHALL
37 EITHER:

38 1. ENSURE THAT TITLE TO THE RESIDENCE IS RECONVEYED TO THE EQUITY
39 SELLER.

40 2. MAKE A PAYMENT TO THE EQUITY SELLER IN AN AMOUNT OF AT LEAST
41 EIGHTY-TWO PER CENT OF THE FAIR MARKET VALUE OF THE PROPERTY WITHIN ONE
42 HUNDRED TWENTY DAYS AFTER EITHER THE EVICTION OF OR VOLUNTARY RELINQUISHMENT
43 OF POSSESSION OF THE RESIDENCE BY THE EQUITY SELLER. THE EQUITY PURCHASER
44 SHALL MAKE A DETAILED ACCOUNTING OF THE BASIS FOR THE PAYMENT AMOUNT OR A
45 DETAILED ACCOUNTING OF THE REASONS FOR FAILURE TO MAKE A PAYMENT, INCLUDING

1 PROVIDING WRITTEN DOCUMENTATION OF EXPENSES, WITHIN THE ONE HUNDRED TWENTY
2 DAY PERIOD. THE ACCOUNTING SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT
3 OF FINANCIAL INSTITUTIONS. FOR PURPOSES OF THIS PARAGRAPH:

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

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

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

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

36 I. FOR THE PURPOSES OF THIS SECTION:

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

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

41 33-765. Limiting provisions void

42 ANY PROVISION OF A COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO LIMIT
43 THE LIABILITY OF THE EQUITY PURCHASER UNDER THIS ARTICLE IS VOID. INCLUSION
44 OF THE PROVISION, AT THE OPTION OF THE EQUITY SELLER, SHALL RENDER THE
45 COVERED CONTRACT VOID. THE EQUITY PURCHASER IS LIABLE TO THE EQUITY SELLER

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

5 33-766. Foreclosure consultant; prohibited acts

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

8 33-767. Foreclosure consultant; exemptions

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

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

13 (a) AN ATTORNEY.

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

15 (c) A MORTGAGE BROKER, LOAN ORIGINATOR, MORTGAGE BANKER OR COMMERCIAL
16 MORTGAGE BANKER.

17 (d) AN ESCROW AGENT.

18 (e) A CONSUMER LENDER.

19 (f) A DEBT MANAGEMENT COMPANY.

20 (g) A CERTIFIED PUBLIC ACCOUNTANT.

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

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

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

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

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

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

44 8. A COURT OF COMPETENT JURISDICTION.

45 9. A TRUSTEE IN BANKRUPTCY.

1 10. A CREDIT SERVICES ORGANIZATION ACTING IN COMPLIANCE WITH TITLE 44,
2 CHAPTER 11, ARTICLE 7.

3 33-768. Consumer fraud; injunction; civil penalty

4 A. A VIOLATION OF THIS ARTICLE IS AN UNLAWFUL PRACTICE IN VIOLATION OF
5 SECTION 44-1522.

6 B. IN ADDITION TO THE OTHER REMEDIES PROVIDED, IF A VIOLATION OF THIS
7 ARTICLE OCCURS, THE ATTORNEY GENERAL MAY APPLY IN THE NAME OF THE PEOPLE OF
8 THIS STATE TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING
9 TO ISSUE AN INJUNCTION AND, ON NOTICE TO THE DEFENDANT OF AT LEAST FIVE DAYS,
10 TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATIONS. A COURT OR JUSTICE
11 THAT DETERMINES THE DEFENDANT HAS VIOLATED THIS ARTICLE MAY ISSUE AN
12 INJUNCTION ENJOINING AND RESTRAINING ANY FURTHER VIOLATION WITHOUT REQUIRING
13 PROOF THAT ANY PERSON HAS ACTUALLY BEEN INJURED OR DAMAGED. IN ANY
14 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL PURSUANT TO
15 ALL APPLICABLE LAWS OR RULES AND DIRECT RESTITUTION. IF THE COURT DETERMINES
16 THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL
17 PENALTY OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN
18 CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL MAY TAKE
19 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND ISSUE SUBPOENAS IN
20 ACCORDANCE WITH ALL APPLICABLE LAWS AND RULES.

21 33-769. Prior lienholder

22 THIS ARTICLE DOES NOT APPLY TO A PRIOR LIENHOLDER IF THE LIEN WAS
23 PROPERLY RECORDED BEFORE THE EXECUTION OF ANY COVERED CONTRACT BY BOTH THE
24 EQUITY SELLER AND THE EQUITY PURCHASER, AND THIS ARTICLE SHALL NOT IMPAIR ANY
25 EQUITY OR OTHER AVAILABLE RIGHTS OF ANY PRIOR LIENHOLDER.

26 33-770. Provisions not exclusive; rights and obligations not
27 affected; waivers void; severability

28 A. THIS ARTICLE IS NOT EXCLUSIVE AND IS IN ADDITION TO ANY OTHER
29 REQUIREMENTS, RIGHTS, REMEDIES AND PENALTIES PROVIDED BY LAW.

30 B. THIS ARTICLE DOES NOT AFFECT OR ALTER THE RIGHTS AND OBLIGATIONS OF
31 A MORTGAGOR AND A MORTGAGEE WITH RESPECT TO A MORTGAGE, OR A TRUSTOR, TRUSTEE
32 OR BENEFICIARY WITH RESPECT TO A DEED OF TRUST.

33 C. ANY WAIVER OF ANY PROVISION OF THIS ARTICLE IS VOID AND
34 UNENFORCEABLE AS CONTRARY TO PUBLIC POLICY.

35 D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THIS ARTICLE
36 TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, THE REMAINDER OF
37 THIS ARTICLE AND THE APPLICATION OF ITS PROVISIONS TO OTHER PERSONS AND
38 CIRCUMSTANCES SHALL NOT BE AFFECTED.

39 Sec. 2. Short title

40 This act shall be known and may be cited as the "Arizona home equity
41 theft prevention act".