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

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

ARTICLE 4. HOME EQUITY PURCHASERS AND MORTGAGE CONSULTANTS

33-761. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE" MEANS ANYONE ACTING IN GOOD FAITH WHO PURCHASES THE RESIDENTIAL REAL PROPERTY FROM THE EQUITY PURCHASER FOR VALUABLE CONSIDERATION, WHO PROVIDES THE EQUITY PURCHASER WITH A MORTGAGE OR DEED OF TRUST OR WHO PROVIDES A SUBSEQUENT BONA FIDE PURCHASER WITH A MORTGAGE OR DEED OF TRUST IF THE BONA FIDE PURCHASER OR ENCUMBRANCER HAD NO NOTICE OF THE EQUITY SELLER'S CONTINUING RIGHT TO OR EQUITY IN THE PROPERTY BEFORE THE ACQUISITION OF TITLE OR ENCUMBRANCE, OF THE FACTS DEEMING THE DEED OR CONVEYANCE TO BE A MORTGAGE LOAN TRANSACTION OR OF ANY VIOLATION OF THIS ARTICLE RELATED TO THE PROPERTY BY THE EQUITY PURCHASER.
2. "BUSINESS DAY" MEANS ANY CALENDAR DAY EXCLUDING SATURDAY, SUNDAY OR OTHER LEGAL HOLIDAYS ENUMERATED IN SECTION 1-301.
3. "CONSIDERATION" MEANS ANY PAYMENT OR THING OF VALUE PROVIDED TO THE EQUITY SELLER, INCLUDING UNPAID LEASE PAYMENTS OWED BY THE EQUITY SELLER BEFORE THE DATE OF EVICTION OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY, REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE THE RECONVEYANCE TRANSACTION OR PAYMENT OF MONIES TO SATISFY A DEBT OR LEGAL OBLIGATION OF THE EQUITY SELLER OR THE REASONABLE COST OF REPAIRS FOR DAMAGE TO THE DWELLING CAUSED BY THE EQUITY SELLER BEYOND ORDINARY WEAR AND TEAR, BUT DOES NOT INCLUDE AMOUNTS IMPUTED AS ANY FEE PAID DIRECTLY OR INDIRECTLY TO THE EQUITY PURCHASER, OR THE EQUITY PURCHASER'S REPRESENTATIVE, INCIDENT TO A RECONVEYANCE ARRANGEMENT, EXCEPT FOR REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE THE RECONVEYANCE.
4. "COVERED CONTRACT" MEANS ANY CONTRACT, AGREEMENT OR ARRANGEMENT, OR ANY TERM OF A CONTRACT, AGREEMENT OR ARRANGEMENT, BETWEEN AN EQUITY PURCHASER AND EQUITY SELLER THAT IS EITHER:
   (a) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE.
   (b) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE OR DEFAULT IF THE CONTRACT, AGREEMENT OR ARRANGEMENT INCLUDES A RECONVEYANCE ARRANGEMENT.
5. "DEFAULT" MEANS THAT THE EQUITY SELLER IS TWO MONTHS OR MORE BEHIND IN PAYMENTS ON A MORTGAGE OR A DEED OF TRUST.
6. "EQUITY PURCHASER" MEANS ANY PERSON WHO ACQUIRES TITLE TO ANY RESIDENCE THAT IS THE SUBJECT OF A NOTICE OF TRUSTEE SALE, THAT IS IN FORECLOSURE OR, IF APPLICABLE, THAT IS IN DEFAULT, OR THAT PERSON'S REPRESENTATIVE, EXCEPT A PERSON WHO ACQUIRES TITLE AS FOLLOWS:
   (a) TO USE THE PROPERTY AS A PRIMARY RESIDENCE AND THE PERSON ACTUALLY USES THE PROPERTY AS A PRIMARY RESIDENCE.
   (b) BY A TRUSTEE'S DEED ON SALE PURSUANT TO LAW.
   (c) AT ANY SALE OF PROPERTY AUTHORIZED BY STATUTE.
   (d) BY ORDER OR JUDGMENT OF ANY COURT.
(e) FROM A SPOUSE OR FROM A PARENT, GRANDPARENT, CHILD, GRANDCHILD OR
SIBLING OF THE PERSON OR THE PERSON'S SPOUSE.
(f) AS AN INTERNAL REVENUE SERVICE DESIGNATED NONPROFIT HOUSING
ORGANIZATION OR AS A PUBLIC HOUSING AGENCY.
(g) THROUGH A SALE IN WHICH THE PROCEEDS ARE USED TO COMPLETELY
SATISFY ALL EXISTING MORTGAGES OR DEEDS OF TRUST SECURED BY THE PROPERTY.
(h) AS A BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE.
7. "EQUITY SELLER" MEANS A NATURAL PERSON WHO IS A PROPERTY OWNER OR
HOMEOWNER AT THE TIME OF THE EQUITY SALE.
8. "FORECLOSURE" MEANS THAT AN ACTION PURSUANT TO SECTION 33-721 HAS
BEEN FILED TO FORECLOSE A MORTGAGE OR DEED OF TRUST SECURED BY THE SUBJECT
PROPERTY, A NOTICE OF TRUSTEE'S SALE HAS BEEN GIVEN PURSUANT TO SECTION
33-808 OR THE SUBJECT PROPERTY IS ON AN ACTIVE PROPERTY TAX LIEN SALE LIST.
9. "FORECLOSURE CONSULTANT" MEANS ANY PERSON WHO, DIRECTLY OR
INDIRECTLY, MAKES ANY SOLICITATION, REPRESENTATION OR OFFER TO ANY HOMEOWNER
TO PERFORM FOR COMPENSATION OR WHO, FOR COMPENSATION, PERFORMS ANY SERVICE
THAT THE PERSON IN ANY MANNER REPRESENTS WILL IN ANY MANNER DO ANY OF THE
FOLLOWING WITH RESPECT TO RESIDENTIAL REAL PROPERTY:
(a) STOP OR POSTPONE THE FORECLOSURE SALE OR TRUSTEE'S SALE.
(b) OBTAIN ANY FORBEARANCE FROM ANY BENEFICIARY, TRUSTEE OR MORTGAGEE.
(c) ASSIST THE HOMEOWNER TO REINSTATE A MORTGAGE OR DEED OF TRUST
AFTER ONE OR MORE PAYMENTS HAVE NOT BEEN TIMELY MADE.
(d) OBTAIN ANY WAIVER OF AN ACCELERATION CLAUSE CONTAINED IN ANY
PROMISSORY NOTE OR CONTRACT SECURED BY A MORTGAGE OR DEED OF TRUST.
(e) ASSIST THE HOMEOWNER IN FORECLOSURE OR DEFAULT TO OBTAIN A LOAN OR
ADVANCE OF FUNDS.
(f) AVOID OR AMELIORATE THE IMPAIRMENT OF THE HOMEOWNER'S CREDIT
RESULTING FROM THE RECORDING OF A NOTICE OR A PROCEEDING RESULTING FROM A
DEFAULT UNDER A MORTGAGE OR DEED OF TRUST.
(g) SAVE THE HOMEOWNER'S RESIDENCE FROM FORECLOSURE OR TRUSTEE'S SALE.
10. "PROPERTY OWNER" OR "HOMEOWNER" MEANS ANY OR ALL RECORD TITLE
OWNERS OF THE RESIDENTIAL REAL PROPERTY IN FORECLOSURE OR, IF APPLICABLE, IN
DEFAULT AT THE TIME OF THE EQUITY SALE.
11. "RECONVEYANCE ARRANGEMENT" MEANS AN ARRANGEMENT IN WHICH BOTH OF
THE FOLLOWING OCCUR:
(a) THE TRANSFER OF TITLE TO RESIDENTIAL REAL PROPERTY BY AN EQUITY
SELLER WHO IS IN DEFAULT OR FORECLOSURE, EITHER BY TRANSFER OF INTEREST FROM
AN EQUITY SELLER TO AN EQUITY PURCHASER OR BY CREATION OF A MORTGAGE, DEED OF
TRUST OR OTHER LIEN OR ENCUMBRANCE DURING THE TIME OF DEFAULT OR FORECLOSURE,
THAT ALLOWS THE EQUITY PURCHASER TO OBTAIN LEGAL OR EQUITABLE TITLE TO ALL OR
PART OF THE PROPERTY.
(b) THE SUBSEQUENT CONVEYANCE OR PROMISE OF A SUBSEQUENT CONVEYANCE OF
AN INTEREST, INCLUDING A PURCHASE AGREEMENT, OPTION TO PURCHASE OR LEASE,
BACK TO THE EQUITY SELLER BY THE EQUITY PURCHASER THAT ALLOWS THE EQUITY
SELLER TO REGAIN POSSESSION OF THE PROPERTY.
12. "REPRESENTATIVE" MEANS A PERSON WHO IN ANY MANNER SOLICITS, INDUCES, ARRANGES OR CAUSES ANY EQUITY SELLER TO TRANSFER TITLE OR SOLICITS ANY MEMBER OF THE EQUITY SELLER'S FAMILY OR HOUSEHOLD TO INDUCE OR CAUSE ANY EQUITY SELLER TO TRANSFER TITLE TO THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN DEFAULT TO THE EQUITY PURCHASER.

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

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

33-762. Covered contracts; notices

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

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

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

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

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

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

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

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

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

6. THE TERMS OF ANY RENTAL OR LEASE AGREEMENT.

7. THE TERMS OF ANY RECONVEYANCE ARRANGEMENT.

8. A NOTICE OF CANCELLATION AS PROVIDED IN SUBSECTION E OF THIS SECTION.

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

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

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

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

NOTICE OF CANCELLATION

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

_________________________           ___________________
(SELLER'S SIGNATURE)                    (DATE)

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

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

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

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

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

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

4. PAY THE EQUITY SELLER ANY CONSIDERATION.
5. SUGGEST, ENCOURAGE OR PROVIDE ANY FORM THAT ALLOWS THE EQUITY SELLER TO WAIVE THE EQUITY SELLER'S RIGHT TO CANCEL OR RESCIND UNDER THIS ARTICLE.

B. AN EQUITY PURCHASER SHALL NOT MAKE A FALSE OR MISLEADING STATEMENT REGARDING:
1. THE VALUE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN DEFAULT.
2. THE AMOUNT OF PROCEEDS THE EQUITY SELLER WILL RECEIVE AFTER A FORECLOSURE SALE PURSUANT TO ARTICLE 2 OF THIS CHAPTER OR A TRUSTEE'S SALE PURSUANT TO CHAPTER 6.1 OF THIS TITLE.
3. THE TIMING OF THE JUDICIAL FORECLOSURE PROCESS OR SALE OF TRUST PROPERTY.
4. ANY CONTRACT TERM.
5. THE EQUITY SELLER'S RIGHTS OR OBLIGATIONS INCIDENT TO OR ARISING OUT OF THE SALE TRANSACTION OR RECONVEYANCE ARRANGEMENT.
6. THE NATURE OF ANY DOCUMENT THAT THE EQUITY PURCHASER INDUCES THE EQUITY SELLER TO SIGN.
7. THE SALE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN DEFAULT, OR CONCERNING THE RECONVEYANCE ARRANGEMENT.

C. AN EQUITY PURCHASER SHALL NOT REPRESENT, DIRECTLY OR INDIRECTLY, THAT THE EQUITY PURCHASER:
1. IS ACTING AS AN ADVISOR OR A CONSULTANT FOR OR IN ANY OTHER MANNER ACTING ON BEHALF OF THE EQUITY SELLER.
2. IS CERTIFIED OR LICENSED IF THIS IS NOT TRUE, OR IS NOT LICENSED IF THE EQUITY PURCHASER IS ACTUALLY LICENSED.
3. IS ASSISTING THE EQUITY SELLER TO SAVE THE HOUSE UNLESS THE EQUITY PURCHASER HAS A GOOD FAITH AND REASONABLE BASIS FOR THE REPRESENTATION.
4. IS ASSISTING THE EQUITY SELLER IN PREVENTING A COMPLETED FORECLOSURE OR TRUSTEE'S SALE UNLESS THE EQUITY PURCHASER HAS A GOOD FAITH AND REASONABLE BASIS FOR THE REPRESENTATION.

D. AN EQUITY PURCHASER SHALL NOT:
1. INITIATE, ENTER INTO, NEGOTIATE OR CONSUMMATE ANY COVERED CONTRACT INVOLVING RESIDENTIAL REAL PROPERTY IN FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE, OR, IF APPLICABLE, IN DEFAULT IF THE EQUITY PURCHASER, BY THE TERMS OF THE COVERED CONTRACT, TAKES UNCONSCIONABLE ADVANTAGE OF THE EQUITY SELLER.
2. OPERATE IN THIS STATE WITHOUT A LICENSE ISSUED PURSUANT TO TITLE 6, CHAPTER 9, ARTICLE 1 OR 2, UNLESS OTHERWISE PROVIDED BY LAW.

E. AN EQUITY SELLER MAY BRING AN ACTION FOR THE RECOVERY OF DAMAGES OR EQUITABLE RELIEF AGAINST AN EQUITY PURCHASER FOR A VIOLATION OF SECTION 33-762, SUBSECTION A, B OR E, SECTION 33-764 OR THIS SECTION. A COURT MAY AWARD TO A PREVAILING EQUITY SELLER ACTUAL DAMAGES PLUS REASONABLE ATTORNEY FEES AND COSTS. IN ADDITION, THE COURT MAY AWARD EQUITABLE RELIEF OR INCREASE THE AWARD IN AN AMOUNT NOT TO EXCEED THREE TIMES THE EQUITY SELLER'S ACTUAL DAMAGES, OR BOTH, IF THE COURT DEEMS SUCH AN AWARD PROPER. ANY ACTION
BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED WITHIN SIX YEARS AFTER
THE DATE OF THE ALLEGED VIOLATION.

F. ANY EQUITY PURCHASER WHO:
1. WITH INTENT TO DEFRAUD, VIOLATES SUBSECTION A, B, C OR D OF THIS
SECTION OR ENGAGES IN ANY PRACTICE THAT WOULD OPERATE AS CRIMINAL FRAUD OR
DECEIT ON AN EQUITY SELLER, ON CONVICTION, IS GUILTY OF A CLASS 5 FELONY AND
IS SUBJECT TO A FINE OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR
IMPRISONMENT, OR BOTH.
2. KNOWINGLY VIOLATES SUBSECTION A, B, C OR D OF THIS SECTION, ON
CONVICTION, IS GUILTY OF A CLASS 1 MISDEMEANOR AND IS SUBJECT TO A FINE OF
NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH. A
SECOND OFFENSE WITHIN FIVE YEARS IS A CLASS 5 FELONY AND IS SUBJECT TO A FINE
OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH.
3. IF ACTING IN GOOD FAITH, VIOLATES SUBSECTION A, B, C OR D OF THIS
SECTION IS NOT GUILTY OF THE VIOLATION IF THE EQUITY PURCHASER:
   (a) ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMPLIANCE
FAILURE WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR
NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID
SUCH ERRORS. FOR THE PURPOSES OF THIS SUBDIVISION, "BONA FIDE ERRORS"
INCLUDES A CLERICAL, CALCULATION, COMPUTER MALFUNCTION OR PROGRAMMING AND
PRINTING ERROR, BUT DOES NOT INCLUDE AN ERROR OF LEGAL JUDGMENT WITH RESPECT
TO A PERSON'S OBLIGATIONS UNDER THIS ARTICLE OR A FAILURE TO PROVIDE NOTICES
OR OTHER MATERIAL INFORMATION REQUIRED BY THIS ARTICLE.
   (b) NOTIFIES THE EQUITY SELLER WITHIN NINETY DAYS AFTER THE CONTRACT
DATE OF THE COMPLIANCE FAILURE.
   (c) MAKES APPROPRIATE RESTITUTION TO THE EQUITY SELLER AND APPROPRIATE
ADJUSTMENTS TO THE TRANSACTION WITHIN NINETY DAYS AFTER THE CONTRACT DATE.
33-764. Mortgage loan transaction; reconveyance; requirements;
definitions
A. A TRANSACTION DEEMED TO BE A MORTGAGE LOAN UNDER THIS ARTICLE IS
SUBJECT TO ARTICLES 1 AND 2 OF THIS CHAPTER IN ADDITION TO THE REQUIREMENTS
OF THIS ARTICLE.
B. ANY TRANSACTION IN WHICH AN EQUITY SELLER PURPORTS TO GRANT A
RESIDENCE THAT IS IN FORECLOSURE, SUBJECT TO A TRUSTEE'S SALE OR IN DEFAULT
TO AN EQUITY PURCHASER BY ANY INSTRUMENT THAT APPEARS TO BE AN ABSOLUTE
CONVEYANCE AND THAT RESERVES TO THE EQUITY SELLER OR IS GIVEN BY THE EQUITY
PURCHASER AN OPTION OR OTHER RIGHT TO REPURCHASE CREATES A PRESUMPTION THAT
THE TRANSACTION IS A MORTGAGE LOAN TRANSACTION, WHICH MAY BE OVERCOME BY
CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY, AND THAT THE PURPORTED
ABSOLUTE CONVEYANCE IS A MORTGAGE OR DEED OF TRUST. IF THE EQUITY PURCHASER
HAS ENGAGED IN FOUR OR MORE SUCH TRANSACTIONS IN ANY TWELVE MONTH PERIOD,
THOSE TRANSACTIONS ARE CONCLUSIVELY DEEMED TO BE MORTGAGE LOAN TRANSACTIONS.
C. AN EQUITY PURCHASER SHALL NOT ENTER INTO A RECONVEYANCE ARRANGEMENT
UNLESS:
1. The equity purchaser verifies by appropriate documentation that the equity seller has or is likely to have a reasonable ability to pay for the subsequent conveyance of an interest back to the equity seller. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to purchase the property within the term of the option to purchase. There is a rebuttable presumption that the equity purchaser has not verified reasonable payment ability if the equity purchaser has not obtained documents other than a statement by the equity seller of assets, liabilities and income. The standard for determining a reasonable ability to pay shall be the same guidelines as set forth by the United States Department of Housing and Urban Development's Federal Housing Administration.

2. The equity purchaser and the equity seller complete a closing for any reconveyance arrangement in which the equity purchaser obtains a deed or mortgage from an equity seller. For the purposes of this paragraph, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage or deed of trust on the real property conducted by a licensed escrow agent or an attorney who is not employed by or an affiliate of the equity purchaser.

3. The equity purchaser obtains written consent from the equity seller before the equity purchaser grants any interest in the property to anyone else during the time the equity seller maintains an interest in the property, including an option to repurchase.

4. The equity purchaser notifies all existing deed of trust or mortgage lienholders of the equity purchaser's intent to accept conveyance of an interest in the property from the equity seller and fully complies with all terms and conditions contained in the deed of trust or mortgage lien documents, including due-on-sale provisions or meeting all qualification requirements for assuming the repayment of the mortgage or deed of trust.

D. An equity purchaser shall not enter into repurchase or lease terms as part of the reconveyance arrangement that are unfair or commercially unreasonable and shall not engage in any other unfair or unconscionable conduct.

E. Parol evidence is admissible to prove that a transaction between an equity seller and an equity purchaser is a reconveyance arrangement or a mortgage loan transaction.

F. As part of a reconveyance arrangement, an equity purchaser shall either:

1. Ensure that title to the residence is reconveyed to the equity seller.

2. Make a payment to the equity seller in an amount of at least eighty-two percent of the fair market value of the property within one hundred twenty days after either the eviction or voluntary relinquishment of possession of the residence by the equity seller. The equity purchaser shall make a detailed accounting of the basis for the payment amount or a detailed accounting of the reasons for failure to make a payment, including
PROVIDING WRITTEN DOCUMENTATION OF EXPENSES, WITHIN THE ONE HUNDRED TWENTY DAY PERIOD. THE ACCOUNTING SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS. FOR PURPOSES OF THIS PARAGRAPH:

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


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

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

I. FOR THE PURPOSES OF THIS SECTION:

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

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

33-765. **Limiting provisions void**

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

33-766. Foreclosure consultant; prohibited acts
EXCEPT AS PROVIDED IN SECTION 33-767, A PERSON SHALL NOT ACT AS A
FORECLOSURE CONSULTANT.

33-767. Foreclosure consultant; exemptions
SECTION 33-766 DOES NOT APPLY TO THE FOLLOWING PERSONS OR ENTITIES, OR
THEIR AGENTS AND EMPLOYEES:
1. THE FOLLOWING PERSONS ACTING WITHIN THE SCOPE OF A LICENSE GRANTED
BY AN AGENCY OF THIS STATE:
   (a) AN ATTORNEY.
   (b) A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON.
   (c) A MORTGAGE BROKER, LOAN ORIGINATOR, MORTGAGE BANKER OR COMMERCIAL
   MORTGAGE BANKER.
   (d) AN ESCROW AGENT.
   (e) A CONSUMER LENDER.
   (f) A DEBT MANAGEMENT COMPANY.
   (g) A CERTIFIED PUBLIC ACCOUNTANT.
2. A PERSON OR THE PERSON'S AUTHORIZED AGENT ACTING UNDER THE EXPRESS
AUTHORITY OR WRITTEN APPROVAL OF THE UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT OR ANOTHER DEPARTMENT OR AGENCY OF THE UNITED STATES OR
THIS STATE TO PROVIDE SERVICES.
3. AN AGENCY OF ANY STATE OR THE UNITED STATES.
4. A PERSON WHO DOES BUSINESS UNDER ANY OTHER LAW OF THIS STATE, OR
LAW OF ANY OTHER STATE WHILE REGULATED BY AN AGENCY OF THE OTHER STATE OR THE
UNITED STATES, RELATING TO BANKS, SAVINGS BANKS, TRUST COMPANIES, SAVINGS AND
LOAN ASSOCIATIONS, PROFIT SHARING AND PENSION TRUSTS, CREDIT UNIONS,
INSURANCE COMPANIES OR CONSUMER LENDERS, OR RECEIVERSHIP, INCLUDING DIRECTLY
OR INDIRECTLY MAKING, NEGOTIATING OR OFFERING TO MAKE OR NEGOTIATE A MORTGAGE
LOAN IF THE MORTGAGE TRANSACTIONS ARE REGULATED BY THE OTHER LAW OR ARE UNDER
THE JURISDICTION OF A COURT.
5. A NONPROFIT FEDERALLY TAX EXEMPT CORPORATION THAT OFFERS COUNSELING
OR ADVICE TO AN OWNER OF A HOME IN FORECLOSURE OR LOAN DEFAULT IF THE
CORPORATION DOES NOT CONTRACT FOR SERVICES WITH FOR-PROFIT LENDERS OR EQUITY
PURCHASERS.
6. A PERSON WHO HOLDS OR IS OWED AN OBLIGATION SECURED BY A LIEN ON
ANY RESIDENTIAL REAL PROPERTY IF THE PERSON PERFORMS SERVICES IN CONNECTION
WITH THIS OBLIGATION OR LIEN AND THE OBLIGATION OR LIEN DID NOT ARISE AS THE
RESULT OF OR AS PART OF A PROPOSED COVERED CONTRACT.
7. A MORTGAGE SERVICER OR TRUSTEE UNDER A DEED OF TRUST ACTING WITHIN
THE SCOPE OF ITS RESPONSIBILITIES AS A SERVICER OR TRUSTEE.
8. A COURT OF COMPETENT JURISDICTION.
9. A TRUSTEE IN BANKRUPTCY.
10. A CREDIT SERVICES ORGANIZATION ACTING IN COMPLIANCE WITH TITLE 44,
CHAPTER 11, ARTICLE 7.

33-768. Consumer fraud; injunction; civil penalty
A. A VIOLATION OF THIS ARTICLE IS AN UNLAWFUL PRACTICE IN VIOLATION OF
SECTION 44-1522.
B. IN ADDITION TO THE OTHER REMEDIES PROVIDED, IF A VIOLATION OF THIS
ARTICLE OCCURS, THE ATTORNEY GENERAL MAY APPLY IN THE NAME OF THE PEOPLE OF
THIS STATE TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING
TO ISSUE AN INJUNCTION AND, ON NOTICE TO THE DEFENDANT OF AT LEAST FIVE DAYS,
TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATIONS. A COURT OR JUSTICE
 THAT DETERMINES THE DEFENDANT HAS VIOLATED THIS ARTICLE MAY ISSUE AN
INJUNCTION ENJOINING AND RESTRAINING ANY FURTHER VIOLATION WITHOUT REQUIRING
PROOF THAT ANY PERSON HAS ACTUALLY BEEN INJURED OR DAMAGED. IN ANY
PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL PURSUANT TO
ALL APPLICABLE LAWS OR RULES AND DIRECT RESTITUTION. IF THE COURT DETERMINES
THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL
PENALTY OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN
CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL MAY TAKE
PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND ISSUE SUBPOENAS IN
ACCORDANCE WITH ALL APPLICABLE LAWS AND RULES.

33-769. Prior lienholder
THIS ARTICLE DOES NOT APPLY TO A PRIOR LIENHOLDER IF THE LIEN WAS
PROPERLY RECORDED BEFORE THE EXECUTION OF ANY COVERED CONTRACT BY BOTH THE
EQUITY SELLER AND THE EQUITY PURCHASER, AND THIS ARTICLE SHALL NOT IMPAIR ANY
EQUITY OR OTHER AVAILABLE RIGHTS OF ANY PRIOR LIENHOLDER.

33-770. Provisions not exclusive; rights and obligations not
affected; waivers void; severability
A. THIS ARTICLE IS NOT EXCLUSIVE AND IS IN ADDITION TO ANY OTHER
REQUIREMENTS, RIGHTS, REMEDIES AND PENALTIES PROVIDED BY LAW.
B. THIS ARTICLE DOES NOT AFFECT OR ALTER THE RIGHTS AND OBLIGATIONS OF
A MORTGAGOR AND A MORTGAGEE WITH RESPECT TO A MORTGAGE, OR A TRUSTOR, TRUSTEE
OR BENEFICIARY WITH RESPECT TO A DEED OF TRUST.
C. ANY WAIVER OF ANY PROVISION OF THIS ARTICLE IS VOID AND
UNENFORCEABLE AS CONTRARY TO PUBLIC POLICY.
D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THIS ARTICLE
TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, THE REMAINDER OF
THIS ARTICLE AND THE APPLICATION OF ITS PROVISIONS TO OTHER PERSONS AND
CIRCUMSTANCES SHALL NOT BE AFFECTED.

Sec. 2. Short title
This act shall be known and may be cited as the "Arizona home equity
theft prevention act".