

# Foreclosure, Scams - By Jurisdiction

## Executive Summary

### FORECLOSURE SCAMS

#### ANNUAL REPORT EXECUTIVE SUMMARY

July 2016

#### Overview

Thirty-nine (72 percent) of the 54 jurisdictions surveyed have explicitly addressed the problem of foreclosure scams. Two common approaches are regulating foreclosure consultants and/or regulating foreclosure reconveyances. The vast majority of this legislation has been enacted since 2008. Generally applicable mortgage fraud statutes also frequently apply to persons who seek to take advantage of distressed homeowners.

Thirteen jurisdictions have revised their laws related to foreclosure scams since this survey was last updated in May 2015. The most significant changes were as follows:

- Colorado amended its definition of "foreclosure consultant" and revised its list of mortgage loan originators' prohibited acts;
- Hawaii revised its list of prohibited acts that apply to distressed property consultants;
- Mississippi extended its S.A.F.E. Mortgage Act and revised the acts that are prohibited under that law;
- in 2014, Missouri changed its classification of criminal mortgage fraud from a class C penalty to a class D penalty, effective January 1, 2017;

- New Hampshire significantly revised its provisions related to debt adjustment services, effective January 1, 2017; and
- North Carolina amended its definition of a "foreclosure rescue transaction."

### Foreclosure Consultants

Of the 22 jurisdictions that regulate foreclosure consultants (also known as "distressed property consultants"), only three require licensure or registration of such consultants. All these jurisdictions impose requirements relating to contracts between homeowners and the consultants and prohibit specified consultant conduct. Eleven states expressly exempt real estate licensees from these laws as long as the licensee is acting within the scope of his or her license. Several other states sweep real estate licensees into potential coverage by defining other categories of persons within the purview of the law. Maryland, for example requires licensure of a "person who performs any covered service" performed by a foreclosure consultant, as defined by the statute. California requires a foreclosure consultant's "representative" to hold a real estate license.

### Foreclosure Reconveyances

Eighteen jurisdictions regulate foreclosure reconveyances (also known as equity conveyances), which are generally defined as transactions in which a homeowner in default or foreclosure transfers title or an interest in the distressed property to a purchaser who promises to reconvey it back to the seller at a later date, while allowing the homeowner to remain in possession of the property. These laws generally require written contracts, which must contain notice of the owner's right to cancel the contract within a specified period, and prohibit defined conduct by the purchaser.

### Mortgage Fraud

Twenty-five jurisdictions prohibit mortgage fraud. These statutes apply to some or all mortgage loan transactions and make it a criminal offense to knowingly make material misstatements, misrepresentations, or omissions to another party to the transaction or to file documents that the offender knows or should have known contain such misstatements, misrepresentations, or

omissions. The majority of these statutes have been enacted within the last five years. Missouri has a mortgage fraud statute specifically applicable to real estate licensees, as does Colorado.

### Miscellaneous Laws

Several jurisdictions have enacted laws of interest that do not fall within the above categories. The District of Columbia, for instance, prohibits "foreclosure rescue transactions," and several jurisdiction, such as North Carolina, ban debt adjusting transactions, including foreclosure assistance. Virginia has enacted a fraud law that applies solely to a "supplier of services to avoid or prevent foreclosure." And Washington criminalizes "equity skimming." Idaho law requires that during the foreclosure period any contract with a homeowner involving the transfer of a residential property interest must be in writing and include a mandated notice providing information about online resources regarding "rescue" transactions. Ohio law addresses suppliers' unconscionable acts, and Vermont's licensed lenders laws and the Virgin Island's S.A.F.E. Mortgage Act both prohibit fraud.

## Alabama

### Alabama, Liability for Financing Scams

#### Residential Mortgage Fraud Act

Alabama's 2009 Residential Mortgage Fraud Act prohibits the following conduct by *any* person acting with the intent to defraud:

- knowingly making any material deliberate misstatement or misrepresentation during the mortgage lending process with the specific intention that it be relied on by a mortgage broker, mortgage lender, mortgage servicer, mortgage processor, borrower or any other party to the lending process;
- knowingly using or facilitating the use of any material deliberate and known misstatement or misrepresentation knowing the same to contain a misstatement or misrepresentation during the mortgage lending process with the specific intention that it be relied on by a mortgage broker, mortgage lender, mortgage servicer, mortgage processor, borrower or any other party to the lending process; or

- filing or causing to be filed with any public office any document that the person knows to contain a material deliberate misstatement or misrepresentation with the specific intent to cause a residential mortgage fraud.

A violation is a Class C felony.

Statutory section enacted 2009.

[Ala. Code § 13A-9-130 \(2015\)](#)

## Alaska

### Alaska, Liability for Financing Scams

No applicable provisions were located.

## Arizona

### Arizona, Liability for Financing Scams

#### Mortgage Fraud

A person commits residential mortgage fraud if, with intent to defraud, the person:

- knowingly makes a "deliberate misstatement, misrepresentation or material omission during the mortgage lending process" that is relied on by a mortgage lender, *borrower*, or other party to the lending process;
- knowingly "uses or facilitates the use of any deliberate misstatement, misrepresentation or material omission during the mortgage lending process" that is relied on by a mortgage lender, *borrower* or other party to the lending process;
- receives any proceeds or other amounts in connection with a residential mortgage loan that the person knows resulted from a violation of the above; or

- files a residential mortgage loan document that the person knows contains a deliberate misstatement, misrepresentation, or material omission.

A violation is generally a class 4 felony. However, a person who "engages or participates in a pattern of residential mortgage fraud or . . . conspires to engage or participate in a pattern of residential mortgage fraud" is guilty of a class 2 felony.

In this context, a "residential mortgage loan" is a loan secured by a security interest or lien on an interest in one- to four-family residential property, including the renewal or refinancing of a loan.

### Foreclosure Consultants

As of July 29, 2010, Arizona law regulates foreclosure consultants. A "foreclosure consultant is defined as a person who makes a "solicitation, representation or offer to a homeowner to perform for compensation or who, for compensation, performs any covered service that the person represents will do any of the following":

- prevent or postpone a foreclosure sale;
- obtain forbearance;
- assist the homeowner in exercising his or her reinstatement right;
- obtain an extension of the period within which the homeowner may reinstate;
- obtain a waiver of an acceleration clause;
- assist a homeowner who is in default or foreclosure to obtain a loan or advance;

- "[a]void or ameliorate the impairment of the homeowner's credit" resulting from a notice of sale or a foreclosure sale;
- save the homeowner's residence from foreclosure; or
- assist the homeowner in a foreclosure reconveyance.

A "covered service" includes:

- financial counseling;
- receiving money to distribute it to creditors "in payment or partial payment of any obligation secured by a mortgage or other lien on a residence in foreclosure";
- contacting a creditor on a homeowner's behalf;
- arranging or attempting to arrange an extension of the period within which a homeowner may cure the default and reinstate the obligation;
- arranging or attempting to arrange a delay or postponement of a foreclosure sale;
- advising the filing or assisting in the preparation of a document for filing with the United States bankruptcy court; or
- giving any advice, explanation, or instruction related to curing a default or reinstating an obligation secured by a lien on the residence in foreclosure, "to the full satisfaction of the obligation or to the postponement or avoidance of a foreclosure sale."

A "residence in foreclosure" is a residential real property consisting of no more than four family dwelling units, one of which the homeowner occupies as a principal residence, against which there is recorded an outstanding notice of the pendency of an action for foreclosure or notice of sale.

These statutory requirements generally do *not* apply to the following, among others:

- a licensed attorney performing an activity related to the person's attorney-client relationship;
- a person doing business under a law that regulates financial institutions;
- a licensed real estate broker or salesperson;
- certain nonprofit organizations, unless the organization is an associate of the foreclosure consultant; and
- certain individuals or entities working to purchase the residence in foreclosure through a short sale, provided the individual or entity does not receive compensation for the transaction.

A foreclosure consultant may not:

- receive compensation until after the foreclosure consultant has fully performed each contracted covered service;
- receive compensation for "any reason that is not fully disclosed to the homeowner";
- take a "wage assignment, lien on real or personal property, assignment of a homeowner's equity or other interest in a residence in foreclosure or other security" for compensation;

- receive consideration from a third party in connection with a covered service provided to a homeowner, unless first fully disclosed to the homeowner;
- acquire an interest in the homeowner's residence in foreclosure; or
- accept a power of attorney from a homeowner for any purpose, other than to inspect documents.

A foreclosure consulting contract must:

- be in writing;
- be provided to and retained by the homeowner for review at least 24 hours before signing;
- be printed in at least 12-point type;
- include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed and the date the homeowner signed the contract;
- fully disclose the exact nature of the foreclosure consulting services to be provided;
- disclose the total amount and terms of any compensation; and
- be dated and personally signed, with each page initialed, and acknowledged by a notary public in the homeowner's presence at the time the homeowner signs the contract.



A homeowner has the right to cancel a contract with a foreclosure consultant until midnight of the third business day following the day on which the homeowner signs the contract.

A homeowner who is injured as a result of a foreclosure consultant's violation of these provisions may bring an action against the foreclosure consultant to recover damages, including reasonable attorney fees and costs. If the homeowner prevails, the court may award punitive damages, which must be at least one and one-half times the amount awarded to the homeowner as actual damages.

A foreclosure consultant who engages in any conduct that constitutes fraud or deceit against a homeowner, including a foreclosure reconveyance, is guilty of a class 1 misdemeanor.

Statutory section 13-2320 enacted 2007; §§ 44-1378, 44-1378.01, 44-1378.02, 44-1378.03, 44-1378.04, 44-1378.05, and 44-1378.06 enacted 2010.

[Ariz. Rev. Stat. §§ 13-2320; 44-1378, -1378.01, -1378.02, -1378.03, -1378.04, -1378.05, -1378.06 \(2015\)](#)

## Arkansas

### Arkansas, Liability for Financing Scams

No specifically applicable provisions were located. However, a person who acts as a debt adjuster is guilty of a Class A misdemeanor.

Also, the state's Fair Mortgage Lending Act provides that it is unlawful for any person (other than a state or federally chartered bank or other specified financial institution), in the course of any mortgage loan transaction or activity, to act as follows:

- to "misrepresent or conceal any material fact or make any false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or to pursue a course of misrepresentation through agents or otherwise"; or
- in connection to mortgage loans, to engage in any "transaction, practice, or course of business" that is "not in good faith or fair dealing," is misleading or deceptive, or constitutes a fraud.

A person who willfully violates this provision is guilty of a Class B felony. Each transaction involving the unlawful making or brokering of a mortgage loan is a separate offense.

Statutory section 23-39-516 amended 2003; §§ 23-39-502 and 23-39-513 amended 2013; § 5-63-302 amended 2015.

Ark. Code §§ 5-63-302; 23-39-502, -513 -516 (LexisNexis 2016)

## California

### California, Liability for Financing Scams

Foreclosure Consultants (Cal. Civ. Code §§ 2945.1, .2, .3, .4, .45, .7, .9, .11)

California regulates *foreclosure consultants*, defined as persons who make a solicitation, representation or offer to any owner to perform or perform for compensation any service that the person represents will in any manner accomplish any of the following:

- postpone or stop a foreclosure sale;
- obtain a forbearance from a beneficiary or mortgagee;
- assist the homeowner in exercising a reinstatement right;
- obtain an extension of the homeowner's reinstatement period;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in the deed of trust or mortgage;

- assist the homeowner in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from a recorded notice of default or a foreclosure sale;
- save the owner's residence from foreclosure; or
- assist the homeowner in obtaining from the beneficiary, mortgagee, or trustee under a power of sale, or counsel for such persons, the remaining proceeds from the foreclosure sale of the owner's residence.

The law requires that a foreclosure consultant obtain a certificate of registration from the California Department of Justice. A foreclosure consulting contract must be in writing and fully disclose the exact nature of the foreclosure consultant's services and the total compensation amount and terms. It is subject to cancellation within five business days after execution by the homeowner.

Specified individuals, including, among others, a real estate licensee, if acting under the authority of his or her license, are not deemed a foreclosure consultant for purposes of the law. In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- acquire any interest in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.

Any person who violates § 2945.4 is punished by a fine of up to \$10,000, imprisonment up to one year, or both.

Additionally, a real estate licensee might be deemed a "representative" of a foreclosure consultant. A "representative" is "a person who in any manner solicits, induces, or causes (1) any owner to contract with a foreclosure consultant, (2) any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant, or (3) any member of the owner's family or household to induce or cause any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant." Any representative deemed to be the agent and/or employee of the foreclosure consultant must provide both:

- written proof to the owner that the representative has a valid current California real estate sales license and that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the fair market value of the real property that is subject to the foreclosure consulting contract; and
- a written statement, under penalty of perjury, that the representative has a valid current California real estate sales license and that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the fair market value of the real property that is subject to the foreclosure consulting contract and has complied with the above paragraph, such statement to be provided to all parties to the contract prior to the transfer of any interest in the real property that is the subject of the foreclosure consulting contract.

#### Equity Purchasers (Cal. Civ. Code §§ 1695.1, .2, .3, .4, .5, .8, .15, .17)

California also regulates an *equity purchaser*, defined as a person who acquires title to any residence in foreclosure. The term does not include, among others, a person who acquires title to use the property as his or her personal residence.

Any offer, contract, agreement, or arrangement, or any term thereof, between an equity purchaser and equity seller incident to the sale of a residence in foreclosure, must be in writing, contain the parties' entire agreement, and contain the provisions required by statute. The equity seller may cancel the contract within five business days following the day on which the equity seller signed the contract or until the day scheduled for the sale of the property pursuant to a power of sale conferred in a deed of trust, whichever occurs first. Numerous restrictions are imposed on the actions taken by and representations made by an equity purchaser.

A real estate licensee might be deemed a "representative" of an equity purchaser. A "representative" is "a person who in any manner solicits, induces, or causes any property owner to

transfer title or solicits any member of the property owner's family or household to induce or cause any property owner to transfer title to the residence in foreclosure to the equity purchaser." A representative deemed to be the agent and/or employee of the foreclosure consultant must provide both:

- written proof to the equity seller that the representative has a valid current California real estate sales license and that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the fair market value of the real property that is subject to the contract; and
- a written statement, under penalty of perjury, that the representative has a valid current California real estate sales license and that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the fair market value of the real property that is subject to the contract and has complied with the above paragraph, such statement to be provided to all parties to the contract before the transfer of any interest in the real property that is the subject of the contract.

An equity purchaser who violates § 1695.6 or who engages in a practice that operates as a fraud or deceit on an equity seller may be punished by a fine of up to \$25,000, imprisonment for up to one year, or both.

#### Mortgage Fraud (Cal. Penal Code § 532f)

A person commits mortgage fraud if, with the intent to defraud, the person:

- deliberately makes any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, *borrower*, or any other party to the mortgage lending process will rely on it;
- deliberately uses or facilitates the use of any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, *borrower*, or any other party to the mortgage lending process will rely on it;

- receives proceeds or other funds in connection with a mortgage loan closing that the person knew resulted from a violation of the above restrictions; or
- files a document the person knows to contain a deliberate misstatement, misrepresentation, or omission.

A person who violates these provisions is guilty of a public offense punishable by imprisonment for up to one year. Fraud involving a mortgage loan may be prosecuted under this provision only if the value of the alleged fraud meets the state's grand-theft threshold.

In this context, "mortgage loan" includes "a loan or agreement to extend credit to a person that is secured by a deed of trust or other document representing a security interest or lien upon any interest in real property, including the renewal or refinancing of the loan."

#### Mortgage Loan Modifications (Cal. Civ. Code § 2944.7)

It is unlawful for a person who performs a mortgage loan modification or other form of mortgage loan forbearance for compensation paid by the borrower to:

- demand or receive compensation until after the person has "fully performed each and every service the person contracted to perform or represented that he or she would perform";
- take security to secure the payment of compensation; or
- take a power of attorney from the borrower.

A violation of this provision by a natural person is punishable by a fine of up to \$10,000, imprisonment for up to one year, or both. A violation by a business entity is punishable by a fine of up to \$50,000.

Effective January 1, 2015, in addition to the penalties and remedies provided by Chapter 5 of Part 2 of Division 7 of the Business and Professions Code, a person who violates this provision is liable for a civil penalty not to exceed \$20,000 for each violation. This civil penalty is assessed and recovered in a civil action brought by specified public attorneys in the name of the people of the State of California.

This provision applies only to mortgages and deeds of trust secured by residential real property containing up to four dwelling units. The relevant statute, which was previously effective only until January 1, 2017, is now effective indefinitely.

#### California Finance Lenders Law (Cal. Fin. Code §§ 22161, 22707.5, 22712)

A person subject to the California Finance Lenders Law may not knowingly misrepresent material information regarding a transaction or commit an act that constitutes fraud or dishonest dealings. If the commissioner has cause to believe that a licensee under the California Finance Lenders Law or the California Residential Mortgage Lending Act is violating or has violated the law applicable to the relevant licensee, or that any other person is violating those laws, the commissioner may issue a written citation that may contain an order to correct the violation. He or she may also assess an administrative fine of up to \$2,500. If, after an investigation, the commissioner has reasonable grounds to believe that a person is conducting business under the California Finance Lenders Law in an unsafe or injurious manner, he or she may issue a written order directing the person to discontinue the unsafe or injurious practice.

Statutory section 1695.2 enacted 1979; §§ 1695.1 and 1695.3 amended 1980; § 1695.15 enacted 1990; § 1695.17 enacted 1990, but held unconstitutional in part; § 2945.11 amended 1996; §§ 1695.4 and 1695.5 amended 1997; §§ 2945.2, 2945.3, 2945.4, and 2945.9 amended 2008; § 2945.45 enacted 2008; § 2945.1 amended 2010; §§ 532f, 2945.7, and 1695.8 amended 2011; §§ 22161 amended 2013; § 22707.5 enacted 2013; § 2944.7 amended 2014; § 22712 amended 2015.

[Cal. Civ. Code §§ 1695.1, .2, .3, .4, .5, .8, .15, .17; 2944.7; 2945.1, .2, .3, .4, .45, .7, .9, .11; Fin. Code §§ 22161, 22707.5, 22712; Penal Code § 532f \(2015\)](#)

## Colorado

### Colorado, Liability for Financing Scams

Prohibited Acts by Real Estate Licensees in Mortgage Loan Transactions (§ 38-40-105)

A real estate agent or broker is prohibited from taking any of the following actions in connection with any residential mortgage loan transaction:

- if directing engaged in negotiating, originating or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the agent or broker may not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the agent or broker actually knew or, under the terms or circumstances of the transaction, reasonably should have known of such falsity, misrepresentation or concealment; or
- if not directly engaged in negotiating, originating or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the agent or broker may not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the agent or broker had actual knowledge of such falsity, misrepresentation or concealment.

Foreclosure Protection Act (§§ 6-1-1103, -1104, -1105, -1107, -1112, -1113, -1115, -1117, -1118; 38-38-102.5)

The Colorado Foreclosure Protection Act regulates any *foreclosure consultant*, defined as a person who "does not, directly or through an associate, take or acquire any interest in or title to a home owner's property and who, in the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a home owner to perform, in exchange for compensation from the home owner or from the proceeds of any loan or advance of funds," a service that the person represents will:

- postpone or stop a foreclosure sale;
- obtain a forbearance from a beneficiary under a deed of trust, mortgage or other lien;
- assist the homeowner in exercising a right to cure a default;



- obtain an extension of the period in which the homeowner may cure a default;
- obtain the waiver of an acceleration clause that is contained in an evidence of debt secured by a deed of trust, mortgage or other lien on a residence in foreclosure or contained in such deed of trust, mortgage or other lien;
- assist the homeowner in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from recorded notice of election and demand for sale, commencement of a judicial foreclosure, or due to any foreclosure sale or grant of a deed in lieu of foreclosure or resulting from any late payment or other failure to pay or perform; or
- in any way delay, hinder or prevent foreclosure upon the residence.

The law requires licensure of foreclosure consultants and that a foreclosure consulting contract be in writing and subject to cancellation at any time by the homeowner.

A real estate licensee, while engaged in any activity for which he or she is licensed, is not deemed a foreclosure consultant for purposes of the law. An agent or broker should, however, be aware of some of the activities prohibited by the law in which they could become enmeshed. A foreclosure consultant may not, among other things:

- receive consideration from a third party in connection with services provided by a foreclosure consultant to a homeowner, unless the consideration is first fully disclosed in writing to the homeowner; or
- directly or indirectly, or through an associate, acquire an interest in the real or personal property of a homeowner with whom the foreclosure consultant has contracted.

Accordingly, a mortgage holder's notice prior to a residential foreclosure must contain a statement that "under section 6-1-1107, C.R.S., it is illegal for any person acting as a foreclosure consultant to charge an up-front fee or deposit to the borrower for services related to the foreclosure."

The law also regulates the conduct of *equity purchasers*. An "equity purchaser" is defined as "a person, other than a person who acquires a property for the purpose of using such property as his or her personal residence, who acquires title to a residence in foreclosure." Among other exceptions, it does not include a person who acquires title as a result of certain short sale transactions. Contracts between a homeowner and an equity purchaser must be in writing and are subject to cancellation by the homeowner within three business days following the homeowner's execution of the contract or until the day before the foreclosure sale of the residence, whichever occurs first. Special provisions apply when the transaction reserves to the homeowner, or the homeowner is given an option to repurchase the property from the equity purchaser.

A person who violates Colo. Rev. Stat. § 6-1-1117 (2) or (3) or who intentionally violates § 6-1-1117 (4) is guilty of a misdemeanor and is subject to imprisonment in county jail for up to one year, a fine of up to \$25,000, or both.

Mortgage Loan Originators (§ 12-61-911 (until Aug. 10, 2016); -905.5 (as of Aug. 10, 2016))

Until August 10, 2016, a mortgage loan originator may not, among other things:

- directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- engage in any unfair or deceptive practice toward any person;
- obtain property by fraud or misrepresentation; or
- "solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through the mortgage loan originator's 'best efforts' to obtain a loan even though no loan is actually obtained for the borrower."

As of August 10, 2016, a mortgage loan originator may not, among other things:

- engage in any unfair or deceptive practice toward any person;
- obtain property by fraud or misrepresentation; or
- solicit or enter into "a contract with a borrower that provides, in substance, that the mortgage loan originator may earn a fee or commission through the mortgage loan originator's best efforts to obtain a loan even though no loan is actually obtained for the borrower."

Theft by Deception (§ 18-4-401)

If a person is convicted of or pleads guilty or nolo contendere to theft by deception and the underlying factual basis "involves the mortgage lending process," a minimum fine is mandatory, in addition to any other penalty the court may impose.

Loan Modifier Licensure (4 Colo. Code Regs. 725-3, §§ 5.3, .5)

Effective November 14, 2013, individuals, who are not otherwise exempt from part 9 and who take residential loan modification applications or negotiate, offer, or attempt to negotiate or offer loan modifications, must be licensed as Colorado mortgage loan originators. Those individuals must comply with all the provisions of the Colorado Mortgage Loan Originator Licensing Act, in addition to other requirements set forth in the relevant regulations.

The requirement does not apply to:

- employees of HUD-approved housing counseling agencies;

- employees of mortgage loan servicing companies operating on behalf of the borrowers' mortgage lenders;
- licensed real estate brokers engaged in licensed activities when performing services for certain short-sale transactions; and
- certain attorneys.

Statutory sections 6-1-1105, 6-1-1107, 6-1-1115, 6-1-1117, and 6-1-1118 enacted 2006; §§ 6-1-1103, 6-1-1104, and 6-1-1112 amended 2010; § 18-4-401 amended 2013; § 38-38-102.5 amended 2014; §§ 6-1-1113 and 38-40-105 amended 2016; § 12-61-911 repealed 2016. Regulations adopted 2013.

Colo. Rev. Stat. Ann. §§ 6-1-1103, -1104, -1105, -1107, -1112, -1113, -1115, -1117, -1118; 12-61-911 (as repealed effective Aug. 10, 2016, by [2016 Colo. Sess. Laws ch. 117](#)); 18-4-401; 38-38-102.5; 38-40-105(6) (as amended by [2016 Colo. Sess. Laws ch. 117](#)) (LexisNexis 2016); [4 Colo. Code Regs. 725-3, §§ 5.3, .5 \(2016\)](#)

## Connecticut

### Connecticut, Liability for Financing Scams

#### Residential Mortgage Fraud

A person commits residential mortgage fraud when, for financial gain and with the intent to defraud, he or she:

- knowingly makes a material written misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, mortgage correspondent lender, mortgage broker, *borrower*, or any other person involved in the mortgage lending process will rely on it;

- knowingly uses, facilitates the use, or attempts to use or facilitate the use of any written misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, mortgage correspondent lender, *borrower*, or any other person involved in the mortgage lending process will rely on it;
- receives or attempts to receive proceeds or other funds in connection with a residential mortgage closing that the person knew or should have known resulted from residential mortgage fraud; or
- conspires with or solicits another to engage in residential mortgage fraud.

A person who commits a single act of residential mortgage fraud is guilty of a class D felony. A person who commits two or more acts of residential mortgage fraud is guilty of a class C felony.

All real and personal property "used or intended for use in the course of, derived from or realized through an act of residential mortgage fraud may be subject to a judgment lien in favor of the state to secure any fine levied against a person convicted of mortgage fraud." Courts may also order restitution to any person who has suffered a financial loss due to an act constituting residential mortgage fraud.

Statutory section 53-379b enacted 2009; § 53-379a amended 2011.

[Conn. Gen. Stat. §§ 53-379a, -379b \(2016\)](#)

## Delaware

### Delaware, Liability for Financing Scams

Foreclosure Consultants and Reconveyances (Mortgage Fraud Rescue Act) (§§ 2402B, 2403B, 2413B, 2415B, 2423B, 2425B)

Delaware regulates any *foreclosure consultant*, defined as a person who either systematically contacts owners of residences in default to offer foreclosure consulting services, or solicits a homeowner in writing, in person or through electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:

- stop, enjoin, delay, void, set aside, annul, or stay a foreclosure sale;
- obtain a forbearance from a mortgage servicer, mortgage assignee, or mortgagee;
- assist the homeowner in exercising a right of reinstatement or to refinance a mortgage loan that is in foreclosure and for which an action to foreclose has been filed;
- obtain an extension of the period in which the homeowner may reinstate his obligation or extend the deadline to object to a ratification;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a residence in default or contained in the mortgage;
- assist the homeowner in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from an action to foreclose the mortgage or the conduct of a foreclosure sale;
- save the owner's residence from foreclosure;
- purchase or obtain an option to purchase the homeowner's residence in foreclosure within 20 days prior to the date advertised for a foreclosure sale;
- arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence in default or arrange for an option to repurchase; or

- engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the homeowner limits or impairs the homeowner's equity of redemption in the residence in foreclosure.

The law requires licensure of foreclosure consultants. A foreclosure consulting contract be in writing and subject to cancellation at any time by the homeowner without penalty.

A real estate licensee, when engaged in any activity for the person is licensed, is not deemed a foreclosure consultant for purposes of the law. In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- directly or indirectly, or by means of a related person, acquire an interest in a residence in default from a homeowner with whom the foreclosure consultant has contracted.

The law also regulates *foreclosure reconveyances*. A "foreclosure reconveyance" is a transaction that involves:

- the transfer of an interest in a residence in foreclosure (i.e., owner-occupied one to four single-family unit property against which any type of foreclosure action has been filed) by a homeowner during or incident to a foreclosure proceeding, either by transfer of interest from the homeowner or by creation of a mortgage or other lien or encumbrance that allows the acquirer to obtain legal or equitable title to all or part of the property; and
- a subsequent conveyance, or agreement for a subsequent conveyance, of an interest back to the homeowner from the acquirer or person acting in participation with the acquirer that allows the homeowner to possess the real property following the completion of the foreclosure proceeding, which includes but is not limited to, an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, trust or lease.

The law requires that every foreclosure reconveyance, in the form of a "Notice of Transfer of Deed or Title," be in writing and that the homeowner may cancel the transfer of deed or title within three business days after execution. The foreclosure purchaser must verify and be able to demonstrate that the homeowner has a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner as provided by foreclosure reconveyance or, if the reconveyance provides for a lease with an option to repurchase, that the homeowner has a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the foreclosed homeowner, or make a payment to the homeowner so that the homeowner receives cash payments or consideration in an amount of at least 82 percent of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within 18 months after entering into the reconveyance agreement. Among additional requirements, the law prohibits the foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

#### Mortgage Loan Modification Services Act (§§ 2401C, 2403C, 2404C, 2406C, 2407C)

The "Delaware Mortgage Loan Modification Services Act" protects homeowners from unfair or deceptive practices by mortgage loan modification services providers. The act does not apply to, among others, a licensed real estate broker or real estate salesperson while he or she is negotiating with the mortgage loan holder on a dwelling that is listed for sale by the broker or brokerage organization, provided the licensee charges no additional fee for the negotiation.

Unless exempt, a person may not provide mortgage loan modification services unless he or she registers with and is issued and maintains a certificate of registration from the Attorney General and provides an original corporate surety bond.

A contract for mortgage loan modification services must:

- be in writing and be provided to the homeowner for review at least 24 hours before the homeowner signs it;



- fully disclose the exact nature of the modification services to be provided and the total compensation amount and terms; and
- include a provision that allows the homeowner to cancel at any time without penalty and a separate, detachable "NOTICE OF CANCELLATION" page.

Additional specific disclosures are required.

### Deceptive Foreclosure Practices (§ 2510)

A person may not "make, use, or cause to be made or used a deceptive or fraudulent record, document, or statement in support of any foreclosure upon real property." If a court or tribunal finds that a person has willfully violated this provision, the Attorney General, upon petition, must recover from the person, on behalf of the State, all costs plus a civil penalty of up to \$10,000 per violation. If the violation is against an elderly person or a person with a disability, an additional civil penalty of up to \$10,000 per violation applies. Each day that a willful violation continues is a separate violation.

Statutory sections 2423B and 2425B enacted 2008; §§ 2402B, 2403B, 2413B, and 2415B amended 2011; §§ 2401C, 2403C, 2404C, 2406C, 2407C, and 2510 enacted 2011.

[Del. Code tit. 6, §§ 2402B, 2403B, 2413B, 2415B, 2423B, 2425B, 2401C, 2403C, 2404C, 2406C, 2407C, 2510 \(2016\)](#)

## District of Columbia

### District Of Columbia, Liability for Financing Scams

#### Foreclosure Rescue Services

The District of Columbia prohibits for-profit foreclosure rescue transactions. "It shall be unlawful for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, to engage in, arrange, offer, promote, promise, solicit participation in, or carry out a foreclosure rescue transaction in the District or concerning residential property in the District."

It is also unlawful to "advertise, offer, or promote foreclosure rescue services without disclosing, clearly and conspicuously, a precise description of the goods or services offered and how they will assist persons in avoiding or delaying foreclosure or curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation."

Exception: These prohibitions do *not* prohibit the advertising of, offering of, promoting of or engaging in foreclosure rescue transaction or services that are not carried out for compensation or gain, including transactions engaged in between or among family members or arranged by a bona fide nonprofit community organization or nonprofit housing organization.

A "foreclosure rescue service" is any good or service related to or promising assistance in connection with:

- avoiding or delaying actual or anticipated foreclosure proceedings on residential property;  
or
- curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

A "foreclosure rescue transaction" is a transaction involving the transfer of title to or an interest in real property by a homeowner during or incident to a mortgage default, foreclosure or tax sale proceeding, either by transfer of any interest from the homeowner to another party or the creation of a mortgage trust, or other lien or encumbrance during the foreclosure process, provided the transaction includes the subsequent conveyance, the promise of a subsequent conveyance or a right to a subsequent conveyance of an interest back to the homeowner, including a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, sale/leaseback, trust or other contractual arrangement.

Statutory sections enacted 2007.

D.C. Code §§ 42-2431, -2432 (LexisNexis 2016)

Florida

Florida, Liability for Financing Scams

## Foreclosure-Rescue Consultants (§ 501.1377)

Florida regulates foreclosure-rescue consultants, defined as a person who "directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services."

"Foreclosure-related rescue services" are defined as any good or service related to, or promising assistance in connection with:

- stopping, avoiding or delaying foreclosure proceedings on residential real property; or
- curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

The law requires there must be a written agreement with the homeowner for such services and that payment may not be collected before completing or performing all services contained in the agreement. A homeowner may cancel the agreement without penalty within 3 business days.

The statute also strictly regulates any "foreclosure-rescue transactions," defined as a transaction:

- by which residential real property is conveyed to an equity purchaser with the homeowner maintaining a legal or equitable interest in the property, including, without limitation, a lease option interest, an option to reacquire the property, an interest as beneficiary or trustee to a land trust, or other interest in the property; and
- that is designed or intended by the parties to stop, avoid or delay foreclosure proceedings against the homeowner's residential property.

The content and terms of the mandated written agreement evidencing such a transaction, including the form of the notice of cancellation right, are set forth in the statute.

A real estate licensee is *not* among the persons or entities exempted from compliance with the statute if his or her actions fall within its coverage.

#### Mortgage Fraud (§ 817.545)

Any person commits mortgage fraud if, with the intent to defraud, he or she knowingly:

- makes a material misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, borrower or any other person or entity involved in the mortgage lending process;
- uses or facilitates the use of any material misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, borrower or any other person or entity involved in the mortgage lending process;
- receives any proceeds or any other funds in connection with the mortgage lending process that the person knew resulted from either of the above-described violations; or
- files or causes to be filed with the clerk of the circuit court for any Florida county a document involved in the mortgage lending process which contains a material misstatement, misrepresentation or omission.

Any such violation is a third-degree felony and if the loan value stated on documents used in the mortgage lending process exceeds \$100,000, it is a second-degree felony.

#### Lost, Destroyed, or Stolen Notes (§ 702.11)

A person who wrongly claims to be the holder of, or entitled to enforce, a lost, stolen, or destroyed note and who causes the mortgage secured by that note to be foreclosed is liable to the actual holder for the holder's damages and attorney fees and costs. The actual holder may also "pursue

recovery directly against any adequate protections given." This provision "does not limit or restrict the ability of the actual holder of the note to pursue any other claims or remedies it may have against the maker, the person who wrongly claimed to be the holder, or any person who facilitated or participated in the claim to the note or enforcement thereof."

This act applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after June 7, 2013. It also applies to causes of action pending on June 7, 2013.

Statutory section 817.545 amended 2008; § 501.1377 amended 2010; § 702.11 enacted 2013.

[Fla. Stat. §§ 501.1377; 702.11; 817.545 \(2016\)](#)

## Georgia

### Georgia, Liability for Financing Scams

#### Foreclosure Fraud (§ 16-9-60)

A person commits foreclosure fraud when he or she knowingly or willfully represents that moneys provided to or on behalf of a debtor in connection with property used by the debtor as a dwelling, are a loan when in fact they are used to purchase said property or the debtor's interest therein, or knowingly or willfully makes a fraudulent representation to a debtor about assisting the debtor in connection with such property.

Foreclosure fraud is a felony punishable by imprisonment for not less than one nor more than three years and/or by a fine of not less than \$1000 nor more than \$5000.

#### Georgia Residential Mortgage Fraud Act (§§ 16-8-102, -105, -106)

A person commits residential mortgage fraud when, with the intent to defraud, he or she:

- knowingly makes a deliberate misstatement, misrepresentation, or omission during the mortgage lending process, intending it to be relied on by a mortgage lender, *borrower*, or any other party to the mortgage lending process;
- knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process, intending it to be relied on by a mortgage lender, *borrower*, or any other party to the mortgage lending process;
- receives any proceeds or other funds in connection with a residential mortgage closing that such person knew resulted from a violation of the above;
- conspires to violate any of the stated provisions; or
- files a document he or she knows contains a deliberate misstatement, misrepresentation, or omission.

A person violating these provisions is guilty of a felony punishable by imprisonment for one to 10 years, a fine of up to \$5000, or both. If the violation involves "engaging or participating in a pattern of residential mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud," the violation is punishable by imprisonment for three to 20 years, a fine of up to \$100,000, or both. Each residential property transaction constitutes a separate offense.

Any property "used or intended for use in any manner to facilitate a violation of this article and any proceeds are declared to be contraband and no person shall have a property right in them." The property will be forfeited.

Statutory section 16-9-60 amended 1989; § 16-8-105 enacted 2005; § 16-8-102 amended 2012; § 16-8-106 amended 2015.

Ga. Code §§ 16-8-102, -105, -106; 16-9-60 (LexisNexis 2016)

Guam

## Guam, Liability for Financing Scams

### Mortgage Fraud Act

A person commits mortgage fraud if he or she does any of the following with the intent to defraud:

- knowingly makes any material misstatement, misrepresentation or omission during the mortgage lending process, intending it be relied on by a mortgage lender, borrower or any other party to the lending process;
- knowingly uses or facilitates the use of any material misstatement, misrepresentation or omission during the mortgage lending process, intending it be relied on by a mortgage lender, borrower or any other party to the lending process;
- files or causes the filing of any document with the Department of Land Management that the person knows contains a material misstatement, misrepresentation or omission; or
- receives any proceeds or compensation in connection with a mortgage loan that the person knows resulted from a violation described above.

"Mortgage lending process" is the process through which a person seeks or obtains a residential mortgage loan, including a renewal or refinancing. It includes solicitation, application or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

"Unlawful activity" means to engage in conduct or to solicit, request, command, encourage or intentionally aid another person to engage in conduct that would constitute mortgage fraud.

A person who commits mortgage fraud is guilty of:

- a misdemeanor, if the value is or exceeds \$300 but is less than \$1000;

- a third degree felony, if the value is or exceeds \$1000 but is less than \$5000; and
- a second degree felony, if either the value is or exceeds \$5000 or the object is to obtain something other than monetary value or "sensitive personal identifying information."

Each residential or commercial property transaction offense constitutes a separate violation.

Nothing in the act exempts real estate licensees from the mortgage fraud law.

Statutory sections enacted 2009.

[Guam Code Ann. tit. 9, §§ 46.101, .102, .103 \(2015\)](#)

## Hawaii

### Hawaii, Liability for Financing Scams

Debt Adjusters (§ 446-2)

Generally, a person who acts as a debt adjuster may be fined up to \$500, imprisoned for up to 6 months, or both.

Distressed Property Consultants (§§ 480E-10, -12)

A distressed property consultant may not, among other things:

- represent that a distressed property owner cannot or should not contact his or her lender or servicer;



- misrepresent any material aspect of a mortgage assistance relief service;
- represent the benefits, performance, or efficacy of a mortgage assistance relief service unless he or she has competent and reliable evidence to substantiate the representation;
- conceal a material fact;
- "induce or attempt to induce a distressed property owner to waive any provision" of chapter 480E;
- make a promise, guarantee, or activity not "fully disclosed in the distressed property consultant contract";
- demand or receive compensation until "after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented would be performed";
- receive compensation that exceeds the lesser of "the two most recent monthly mortgage installments of principal and interest due on the loan first secured by the distressed property or the most recent annual real property tax charged against the distressed property";
- take a wage assignment, lien, or other security to secure the payment of compensation;
- receive consideration from a third party related to services rendered to a distressed property owner unless fully disclosed in the consultant's contract;
- acquire any interest in a distressed property from an owner with whom the consultant has contracted;

- advise or instruct a distressed property owner to stop making payments to a lender if the property owner has not received written notice that the property owner's residential loan has been accelerated; or
- fail to disclose specific language and information required by statute.

A person who violates § 480E-10 is guilty of a class C felony and will be fined \$10,000.

Statutory section 446-2 amended 1985; § 480E-12 enacted 2012; § 480E-10 amended 2016.

[Haw. Rev. Stat. §§ 446-2; 480E-10](#) (as amended by [2016 Haw. Sess. Laws ch. 142](#)), [-12 \(2015\)](#)

## Idaho

### Idaho, Liability for Financing Scams

Consumer Foreclosure Protection Act (§§ 45-1602, -1603, -1604)

The Consumer Foreclosure Protection Act requires that during the foreclosure period any contract or agreement with a homeowner involving the transfer of any interest in residential real property must be in writing and include a mandated notice providing information about online resources regarding "rescue" transactions and advising the homeowner of the right to cancel the contract or agreement within five days.

Real estate licensees are *not* among the persons or entities exempted from coverage of the Act.

Mortgage Loan Modification Fee Restrictions (§ 48-603F)

Charging or collecting a fee in connection with mortgage loan modification activities is a violation of the Idaho consumer protection act, unless the person charging the fee has a real estate license or is licensed, exempt, or excluded from licensing pursuant to the Idaho Residential Mortgage Practices Act ([Idaho Code §§ 26-31-201 et seq.](#) or [26-31-301 et seq.](#)).

Statutory section 45-1603 enacted 2008; § 45-1602 amended 2009; § 48-603F enacted 2011; § 45-1604 amended 2015.

[Idaho Code §§ 45-1602, -1603, -1604; 48-603F \(2015\)](#)

## Illinois

### Illinois, Liability for Financing Scams

Distressed Property Consultants and Conveyances (Mortgage Rescue Fraud Act) (765 Ill. Comp. Stat. 940/5, /10, /50)

Illinois regulates any *distressed property consultant*, defined as a person who directly or indirectly, for compensation from the owner, makes any solicitation, representation or offer to perform, or who, for compensation from the owner performs any service that the person represents will in any manner:

- postpone or stop a foreclosure sale or the loss of the home due to nonpayment of taxes;
- obtain a forbearance from a beneficiary or mortgagee, or relief with respect to a tax sale of the property;
- assist the homeowner in exercising a right of reinstatement or redemption;
- obtain an extension of the period in which the homeowner may reinstate his rights with respect to the property;
- obtain a waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;
- assist the owner in foreclosure, loan default or post-tax sale redemption period in obtaining a loan or advance of funds;

- avoid or ameliorate an impairment of the homeowner's credit resulting from the recording of a notice default or the conduct of a foreclosure or tax sale; or
- save the owner's residence from foreclosure or loss of the home due to nonpayment of taxes.

A distressed property consultant contract must be in writing and among other things must contain a notice advising the homeowner of his or her right to cancel the contract at any time until after the consultant has fully performed each service the consultant contracted to perform or represented he or she would perform.

A real estate licensee is not deemed a distressed property consultant when providing licensed activities. In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A distressed property consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- directly or indirectly, or by means of a subsidiary or affiliate, acquire an interest in a distressed property from a homeowner with whom the consultant has contracted.

The law also regulates *distressed property conveyances*. A "distressed property conveyance" is a transaction in which:

- a distressed homeowner transfers an interest in fee in the distressed property to a distressed home purchaser;
- the distressed property purchaser allows the owner of the distressed property to occupy the property; and

- the distressed property purchaser, or a person acting in participation with such purchaser, conveys or promises to convey an interest in fee back to the owner or provides the homeowner with an option to purchase the property at a later date.

A "distressed property purchaser" is any person who acquires an interest in fee in a distressed property or a beneficial interest in a trust holding title to a distressed property, while allowing the owner to possess, occupy or retain any present or future interest in fee in the property. It also includes a person who participates in a joint venture or joint enterprise involving a distressed property conveyance.

Exception: A distressed property owner does not mean a person who acquires distressed property at a short sale, or any person acting in participation with such person, if that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property.

The law requires that every distressed property conveyance be in the form of written contract and that the owner may cancel any contract with a distressed property purchaser within five business days after execution or until the last day of the redemption period, whichever occurs first. The purchaser must verify and be able to demonstrate that the distressed property owner has a reasonable ability to pay for the subsequent reconveyance of the property back to the owner or to make monthly or any other required payments due prior to that time.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the distressed homeowner, or make a payment to the homeowner so that the homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property as of the date of conveyance or at the expiration of the option to repurchase. Among additional requirements, the law prohibits the distressed property purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

#### Debt Settlement Providers (225 Ill. Comp. Stat. 429/10, /15)

Illinois law regulates debt settlement providers and requires them to be licensed. It also protects consumers who enter into agreements with debt settlement providers. However, a "debt settlement provider" explicitly does not include several specified persons or entities, including real estate licensees "acting in the ordinary practice of their profession and not holding themselves out as debt settlement providers."

## Unlawful Manipulation of a Judicial Sale (720 Ill. Comp. Stat. 5/32-14)

A person commits "unlawful manipulation of a judicial sale" if he or she "knowingly and by any means makes any contract with or engages in any combination or conspiracy with any other person who is, or but for a prior agreement is, a competitor of such person for the purpose of or with the effect of fixing, controlling, limiting, or otherwise manipulating (1) the participation of any person in, or (2) the making of bids, at any judicial sale."

Unlawful manipulation of a judicial sale is a Class 3 felony, punishable by a mandatory fine of up to \$1,000,000 if the violator is a corporation or up to \$100,000 if the violator is other than a corporation. A second or subsequent violation is a Class 2 felony.

A person who has been injured by an unlawful manipulation of a judicial sale may maintain an action in the circuit court for damages, an injunction, or both.

Statutory section 940/10 enacted 2006; §§ 940/5 and 940/50 amended 2009; § 5/32-14 enacted 2009; §§ 429/10 and 429/15 enacted 2010.

[765 Ill. Comp. Stat. 940/5, /10, /50](#); [225 Ill. Comp. Stat. 429/10, /15](#); [720 Ill. Comp. Stat. 5/32-14 \(2015\)](#)

## Indiana

### Indiana, Liability for Financing Scams

Foreclosure Consultants and Reconveyances (§§ 24-5.5-1-1, -2-2, -2-4, -4-1, -5-2, -5-3, -5-4)

Indiana regulates any *foreclosure consultant*, defined as a person who directly or indirectly makes a solicitation, representation, or offer to any homeowner to perform, with or without compensation, any service the person represents will:

- postpone or prevent the initiation of a foreclosure proceeding or reverse the effect of a foreclosure proceeding;

- allow the homeowner to become a lessee or renter in the homeowner's residence during or after a foreclosure proceeding; or
- allow the homeowner to have an option to repurchase the homeowner's residence after a foreclosure proceeding.

A foreclosure consulting contract must be in writing and subject to cancellation within seven business days after the contract is signed.

A real estate licensee is not among the persons or entities exempted from the law. Even if his or her activities do not bring an agent or broker within the coverage of the law, a real estate licensee should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not, among other things:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed in writing to the homeowner; or
- directly or indirectly acquire an interest in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.

The law also regulates *foreclosure reconveyances*. A "foreclosure reconveyance" is a transaction that involves:

- the transfer of an interest in real property by a homeowner during or incident to a foreclosure proceeding, either by transfer of interest from the homeowner or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and
- a subsequent conveyance, or promise of a subsequent conveyance, of a property interest from the acquirer or the acquirer's agent back to the homeowner that allows the homeowner to possess the real property following the completion of the foreclosure proceeding.

The law requires that every foreclosure reconveyance be in writing and that the homeowner may cancel the contract within seven business days after the homeowner's transfer of the interest in the real property that is the subject of the reconveyance agreement. The foreclosure purchaser must verify and be able to demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent reconveyance back to the homeowner on completion of the terms of the foreclosure conveyance or, if the contract provides for a lease with an option to repurchase, that the homeowner has a reasonable ability to make the lease payments and repurchase the property within the option term.

A foreclosure purchaser must either ensure that title to the property is reconveyed in a timely manner to the homeowner or, if the real property is sold within 18 months after entering into the foreclosure reconveyance agreement, make a payment to the homeowner such that the homeowner has received consideration in an amount of at least 66 percent of the net proceeds from the resale of the property within 90 days of the resale. Among additional requirements, the law prohibits the foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

#### Loan Broker Violations (§§ 23-2-5-14, -15, -16, -20)

A person may not, in connection with a contract for loan broker services, act as follows:

- use "any device, scheme, or artifice to defraud";
- make any untrue statements or omissions of a material fact;
- engage in any act, practice, or course of business that operates as a fraud or deceit;
- receive any funds the person knows were generated as a result of a fraudulent act; or



- file any document the person knows contains a misstatement or an untrue statement of a material fact or omits a material fact that is necessary to make a statement not misleading, among other things.

If, after a hearing, the commissioner determines that a person has violated these provisions, the commissioner may impose a civil penalty of up to \$10,000 for each violation. The violator is also liable to a damaged person for an amount equal to the actual damages suffered, interest, and attorneys' fees. Also, a person who knowingly violates the above provisions generally commits a Level 5 felony, unless the damaged person is at least 60 years of age, in which case the violation is a Level 4 felony. A person commits a Level 5 felony if the person knowingly makes or causes to be made a statement that is false or misleading in any material respect in:

- any document filed with or sent to the commissioner or the securities division; or
- any proceeding, investigation, or examination under chapter 23-2-5.

#### Home Loan Practices Violations (§ 24-9-5-4)

Generally, a person who violates article 24-9 (regarding home loan practices) is liable to a party to the home loan transaction, mortgage transaction, or real estate transaction for the following:

- actual damages, including consequential damages;
- statutory damages equal to two times the finance charges agreed to in a home loan agreement; and
- costs and reasonable attorney's fees.

A person may also be granted injunctive, declaratory, and other equitable relief.

Statutory section 23-2-5-14 amended 1999; § 23-2-5-15 amended 2007; §§ 24-5.5-2-2, 24-5.5-2-4, 24-5.5-4-1, 24-5.5-5-3, and 24-5.5-5-4 enacted 2007; § 24-5.5-1-1 amended 2009; §§ 23-2-5-20 and 24-9-5-4 amended 2010; §§ 24-5.5-5-2 and 23-2-5-16 amended 2013.

[Ind. Code §§ 23-2-5-14, -15, -16, -20; 24-5.5-1-1, -2-2, -2-4, -4-1, -5-2, -5-3, -5-4; 24-9-5-4 \(2016\)](#)

## Iowa

### Iowa, Liability for Financing Scams

#### Foreclosure Consultants and Reconveyances

Iowa regulates any *foreclosure consultant*, defined as a person who directly or indirectly makes a solicitation, representation or offer to any owner to perform or performs for compensation any service which the person represents will in any manner accomplish any of the following:

- postpone or stop a foreclosure, foreclosure sale, forfeiture, sheriff's sale or tax sale;
- obtain a forbearance, modification or repayment plan for a beneficiary or mortgagee;
- assist the homeowner in exercising a right of redemption, cure the mortgage default or real estate contract default, or redeem the property from a tax sale;
- obtain an extension of the period in which the homeowner may reinstate his obligation;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- assist the homeowner in foreclosure, foreclosure sale, forfeiture, sheriff's sale or tax sale to obtain a loan or advance of funds;

- avoid or ameliorate an impairment of the homeowner's credit resulting from recorded notice of default or the conduct of a foreclosure sale or forfeiture of a real estate contract;
- save the owner's residence from foreclosure, foreclosure sale, forfeiture, sheriff's sale or tax sale; or
- negotiate or obtain a mortgage loan or real estate contract modification, forbearance, repayment plan or other loss mitigation for the consumer.

The law requires licensure of foreclosure consultants and that a foreclosure consulting contract be in writing and subject to cancellation within three business days after execution by the homeowner.

A real estate licensee, if acting within the scope of that license, is not deemed a foreclosure consultant for purposes of the law, unless he or she "is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure." In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- directly or indirectly, or by means of a subsidiary or affiliate, acquire an interest in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.

Iowa also regulates *foreclosure reconveyances*. A "foreclosure reconveyance" is a transaction that involves:

- the transfer of title to real property by a foreclosed homeowner during a foreclosure, forfeiture, or tax sale, either by transfer of interest from the homeowner or by creation of a mortgage or other lien or encumbrance during the process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

- a subsequent conveyance, or promise of a subsequent conveyance, of an interest in the property from the acquirer or person acting in participation with the acquirer back to the foreclosed homeowner that allows the homeowner to possess the residence in foreclosure or other real property, which interest includes but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

The law requires that every foreclosure reconveyance be in writing and that the homeowner may cancel the contract within three business days after execution of the agreement or by the last day of the redemption period, whichever occurs first. The foreclosure purchaser must verify and be able to demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent reconveyance back to the foreclosed homeowner as provided by the contract or, if the contract provides for a lease with an option to repurchase, that the homeowner has a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the foreclosed homeowner, or make a payment to the homeowner such that the homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property (as the property was when the foreclosed homeowner vacated the property) within 90 days of either the eviction or voluntary relinquishment of possession by the homeowner. Among additional requirements, the law prohibits the foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

Statutory sections 714E.3 and 714F.2 enacted 2008; § 714E.2 amended 2008; §§ 714E.1, 714E.4, 714F.1, 714F.4, and 714F.8 amended 2009.

[Iowa Code §§ 714E.1, .2, .3, .4; 714F.1, .2, .4, .8 \(2016\)](#)

## Kansas

### Kansas, Liability for Financing Scams

No specifically applicable provisions were located. However, in general, "debt adjusting," which is defined as "engaging in the business of making contracts . . . with a debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaging in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors," is a class B nonperson misdemeanor. This provision does not apply to debt adjusting that is incidental to the lawful practice of law or to a person registered as a credit services organization.

Statutory section amended 2010.

[Kan. Stat. § 21-6502 \(2015\)](#)

## Kentucky

### Kentucky, Liability for Financing Scams

#### Residential Mortgage Fraud (§ 286.8-990)

Any person commits residential mortgage fraud if, with the intent to defraud, the person does any of the following in connection with the mortgage lending process:

- employs a device, scheme or artifice to defraud;
- engages in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person;
- fails to disburse funds in accordance with a loan commitment;
- knowingly makes or attempts to make a material misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, mortgage broker, borrower or any other person or entity involved in the mortgage lending process;
- knowingly uses or facilitates or attempts to use or facilitate the use of any material misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, mortgage broker, borrower or any other person or entity involved in the mortgage lending process;

- receives or attempts to receive any proceeds or any other funds in connection with a residential mortgage loan closing that the person knew or should have known resulted from any of the above described violations; or
- conspires or solicits another to violate any of the provisions above.

Note: It is sufficient in proving any violation to show that the accused did the act with the intent to deceive or defraud. It need not be shown that any particular person or entity was harmed financially in the transaction or that the person or entity to whom the misrepresentation, misstatement or omission was made relied upon it.

A violation is a Class D felony for the first or second offense and Class C felony for each subsequent offense. The court may also impose a fine not less than \$1000 nor more than \$5000.

Debt Adjusters (§§ 380.010, .030, .040, .060, .100, .990)

Kentucky law regulates debt adjusters. "Debt adjusting" includes, among other things, debt modification or settlement and foreclosure assistance.

A person engaged in debt adjusting must contract in writing with the debtor. The contract must include a full disclosure of the exact nature of the debt-adjusting services and the total amount and terms of compensation. Generally, a debtor entering into a contract to provide debt-adjusting services has the right to cancel the contract until midnight of the fourteenth day after the day the debtor signs the contract offer, and the contract must contain a notice regarding this right to cancel.

Note that Kentucky laws limit the fees a debt adjuster may accept for specified services. Acceptance of a fee in advance of the complete performance of all promised services is prohibited.

A person who engages in debt adjusting must file an initial registration form, and renew his or her registration each year.

A debt adjuster may not act as follows, among other prohibited actions:

- misappropriate or misapply money held in trust;
- settle a debtor's debt if the amount the debtor will owe after settlement is equal to or more than half of the debt amount before settlement, unless the creditor and the debtor assent;
- structure a plan in a manner that would result in a negative amortization of any of the debtor's debts, unless the creditor agrees to refund or waive the finance charge upon payment of the debt's principal; or
- make prohibited representations, such as a representation that the debt adjuster will furnish money to pay bills or prevent attachments, the payment of a certain amount will permit satisfaction of a certain amount of debt, or that participation in a plan will or may prevent foreclosure, among others.

Any unfair, false, misleading, or deceptive act or practice in the conduct of debt adjusting is prohibited. In this context, "unfair" means "unconscionable."

If the court finds that a person has violated one of the above provisions related to debt adjusting, the Attorney General may recover a civil penalty of up to \$5000 per violation. A person who violates Ky. Rev. Stat. § 380.040 is guilty of a misdemeanor, punishable by a fine of \$500, imprisonment for up to 60 days, or both. A violation of chapter 380 is also an unfair, false, misleading, or deceptive practice in the conduct of trade or commerce in violation of Ky. Rev. Stat. § 367.170.

Real estate licensees are *not* explicitly excluded from the definition of "debt adjuster."

#### Mortgage Licensing and Registration Act (§§ 286.8-046, -220)

It is unlawful for a person, in connection with a transaction involving the mortgage lending process, operating a mortgage loan business, or managing or servicing mortgage loans,

- to "employ a device, scheme, or artifice to defraud";
- to engage in an "act, practice, or course of business that operates or would operate as a fraud or deceit upon any person";
- to fail to disburse funds according to a loan commitment;
- to delay closing a mortgage loan in order to increase interest, costs, fees, or charges; or
- to obtain property by fraud or misrepresentation, among other specified acts.

The commissioner may levy a civil penalty against a person who violates these provisions in an amount not less than \$1000 nor more than \$25,000 per violation, plus the state's costs and expenses, including reasonable attorney's fees and court costs.

Statutory sections 286.8-990, 286.8-220, 286.8-046, 380.010, 380.030, 380.040, and 380.990 amended 2010; §§ 380.060 and 380.100 enacted 2010.

[Ky. Rev. Stat. §§ 286.8-046, -220, -990; 380.010, .030, .040, .060, .100, .990 \(2016\)](#)

## Louisiana

### Louisiana, Liability for Financing Scams

#### Mortgage Fraud (§ 14:71.3)

It is unlawful in connection with a residential mortgage lending activity for any person to knowingly:

- employ a device, scheme or artifice with intent to defraud;



- make an untrue statement of material fact with intent to defraud; or
- receive any portion of the purchase, sale or loan proceeds or any other consideration paid or generated in connection with the closing of a residential mortgage loan where the recipient knows that the proceeds or other funds were paid as the result of mortgage fraud.

"Residential mortgage lending activity" is an activity, including electronic activity, engaged in for compensation or with the expectation of compensation in connection with a residential mortgage loan, including, but not limited to solicitation, application, origination, or funding of the loan; the negotiation and placement, or offering to negotiate, place or find the loan for another person; or third-party provider services, including, but not limited to, appraisals, abstracts, escrow services or title insurance; underwriting, signing, closing and funding the loan.

Violations are punishable by imprisonment for not more than 10 years and/or a fine of not more than \$100,000. In addition, full restitution must be made to the victim and any other person who has suffered a financial loss as a result of the offense.

#### Debt Adjusting (§ 14:331)

Louisiana law generally prohibits debt adjusting for profit. Unless exempt, a person who engages in the debt-adjusting business is guilty of a misdemeanor, punishable by a fine of up to \$500, imprisonment for up to six months, or both.

Statutory section 14:331 enacted 1972; § 14:71.3 enacted 2009.

[La. Rev. Stat. §§ 14:71.3; :331 \(2015\)](#)

## Maine

### Maine, Liability for Financing Scams

#### Foreclosure Purchasers

Maine regulates *foreclosure purchasers* and *foreclosure reconveyances*. A "foreclosure reconveyance" is a transaction that involves:

- the transfer of title to a residence in foreclosure (i.e., owner-occupied one- to four-family dwelling unit property where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property) by a foreclosed homeowner either by transfer of interest from the homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and
- a subsequent conveyance, or promise of a subsequent conveyance, of an interest in the residential real property from the acquirer, or person acting in participation with the acquirer, back to the foreclosed homeowner that allows the homeowner to possess the residence in foreclosure or other property, which interest includes but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

A "foreclosure purchaser" is a person acting as the acquirer in a foreclosure reconveyance or a person acting in a joint venture or joint enterprise with one or more acquirers, but it does not include a bona fide purchaser, or a natural person who is not in the business of foreclosure purchasing and has a prior relationship with the foreclosed homeowner. A foreclosure purchaser must be licensed in Maine before engaging in the business of foreclosure purchasing.

The law requires that every foreclosure reconveyance be in writing and that the homeowner may cancel the contract within five business days after the homeowner's execution of the agreement or until the last day of the redemption period, whichever occurs first. The foreclosure purchaser must verify and be able to demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent reconveyance back to the foreclosed homeowner, or if the contract provides for a lease with an option to repurchase, that the homeowner has a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the foreclosed homeowner, or make a payment to the homeowner in an amount of at least 82 percent of the fair market value of the property, less any payments related to the discharge of an existing mortgage, within 150 days of either the eviction or voluntary relinquishment of possession by the homeowner. Among additional requirements, the law prohibits the foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

Statutory sections 6193, 6194, and 6195 enacted 2007; §§ 6192 and 6198 amended 2011.

[Me. Rev. Stat. tit. 32, §§ 6192, 6193, 6194, 6195, 6198 \(2016\)](#)

## Maryland

### Maryland, Liability for Financing Scams

Mortgage Fraud Protection Act (§§ 7-401, -402, -404.1, -406, -407, -408)

Any person commits mortgage fraud if, with the intent to defraud, the person does any of the following:

- knowingly makes a deliberate misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, borrower or any other party to the mortgage lending process;
- knowingly uses or facilitates the use of any deliberate misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, borrower or any other party to the mortgage lending process;
- knowingly creates or produces a document for use during the mortgage lending process that contains a deliberate misrepresentation, misstatement or omission intending that the document contain the misrepresentation, misstatement or omission be relied on by a mortgage lender, borrower or any other party to the mortgage lending process;
- receives any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from any of the above described violations;
- conspires to violate any of the provisions above; or

- files or causes to be filed in the land records in the county where a residential real property is located, any document relating to a mortgage loan the person knows contains a deliberate misstatement, misrepresentation or omission.

A violation is a felony punishable by a fine of not more than \$5000 and/or imprisonment for up to 10 years. If the victim is a vulnerable adult, the maximum fine is \$15,000, with imprisonment not exceeding 15 years. If a pattern of mortgage fraud is involved or a conspiracy, a violator is subject to a maximum fine of \$100,000 and/or imprisonment not exceeding 20 years. Additionally, restitution must be ordered by the court, and all real and personal property used or intended for use in the course of, or derived from or realized through a violation is subject to forfeiture to the State.

The court may enter an order or judgment to:

- prevent a person from using a prohibited practice;
- restore money or real or personal property acquired by a prohibited practice; or
- appoint a receiver in case of willful violation.

In an action brought by the commissioner, the commissioner may:

- recover the costs of the action; and
- require a violator to take affirmative action to correct the violation, including by restitution.

A person may also bring an action for damages incurred as the result of a violation of the act. In that action, the court may award treble damages and reasonable attorneys' fees.

Protection of Homeowners in Foreclosure Act (§§ 7-301, -302, -305, -306, -307, -308, -309, -310, -311, -312, -313, -314, -315, -319, -319.1, -320)

### *Foreclosure Consultants*

Maryland regulates any *foreclosure consultant*, defined as a person who either systematically contacts owners of residences in default to offer foreclosure consulting services, or solicits or contacts a homeowner in writing, in person or through electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:

- postpone, stop, enjoin, delay, void, set aside, annul, or stay a foreclosure sale;
- obtain a forbearance from a mortgage servicer, beneficiary or mortgagee;
- assist the homeowner in exercising a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;
- obtain an extension of the period in which the homeowner may reinstate his obligation or extend the deadline to object to a ratification;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a residence in default or contained in the mortgage;
- assist the homeowner in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;

- save the owner's residence from foreclosure;
- purchase or obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale; or
- arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence after a sale or transfer.

A foreclosure consulting contract must be in writing and is subject to rescission at any time by the homeowner.

A real estate broker, associate broker, or real estate salesperson is exempt from the foreclosure consultant laws only:

- while the person:
  - engages in any activity for which the person is licensed under Maryland's real estate professionals licensing laws; and
  - does not violate any provision of Md. Code Ann., Real Prop. § 7-307 (prohibited activities by foreclosure consultant) or the real estate professional licensing laws; and
- if the residence in default for which the person is conducting a licensed activity:
  - is listed in the local MLS; and
  - is sold or transferred through a settlement, including the conveyance or transfer of a deed, title or establishment of equitable interest.

Other specified individuals or entities, such as mortgage lenders, are also exempt under certain circumstances.

A foreclosure consultant who provides real estate brokerage services must be licensed under the real estate professional licensing statutes (Md. Code Ann., Bus. Occ. & Prof. tit.17). And, a foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under Md. Code Ann., Bus. Occ. & Prof. § 17-532.

Among other prohibitions, a foreclosure consultant may not:

- engage in, arrange, offer, promote, promise, solicit, participate in, assist with, or carry out a foreclosure rescue transaction;

Note: A "foreclosure rescue transaction" is "a transaction in which a residence in default is conveyed by a homeowner who retains a legal or equitable interest in all or part of the property, including an interest under a lease-purchase agreement, an option to reacquire the property, or any other legal or equitable interest in the property conveyed; and . . . [t]hat is designed or intended by the parties to prevent or delay actual or anticipated foreclosure proceedings against the residence in default."

- receive any consideration from any third party in connection with the foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner, clearly listed on any settlement documents and in conformity with the foreclosure consultant statutes;
- receive a commission, regardless of how described, for the sale of a residence in default that exceeds 8% of the sale price; or
- acquire any interest, directly or indirectly, or by means of a subsidiary, affiliate or corporation in which the foreclosure consultant or a member of the consultant's immediate family is a primary stockholder, in a residence in default from a homeowner with whom the consultant has contracted.

*Contract for Sale or Transfer of Residence in Default*

A contract for the sale or transfer of a residence in default that is included in a foreclosure consulting contract or arranged by a foreclosure consultant must be in writing and is subject to rescission by the homeowner within 5 business days after execution. The purchaser of a residence in default must provide the homeowner with a document entitled "Notice to Homeowner," which must contain the details of the transaction and a statement of the homeowner's right to rescind. And, if a tenancy agreement is included on the contract, the purchaser must provide the homeowner with a statutorily mandated document entitled "Statement About Tenancy."

### *Foreclosure Surplus Acquisitions*

Maryland's Protection of Homeowners Act also regulates any "*foreclosure surplus acquisition*," defined as "a transaction involving the transfer, sale, or assignment of the surplus remaining and due the homeowner based on the audit account during a foreclosure proceeding." Each foreclosure surplus acquisition must be in the form of a written contract, and the homeowner may rescind the contract with a foreclosure surplus purchaser within 10 days after the statement of audit account of the foreclosure sale.

### *Violations*

The attorney general or the commissioner may seek an injunction to prohibit a person from engaging in a violation of the act. Also, the court may enter an order or judgment to:

- prevent a person from using a prohibited practice;
  
- restore any money or real or personal property acquired by means of a prohibited practice;  
or
  
- appoint a receiver, in the case of a willful violation.

The attorney general or the commissioner may recover costs, and a violation of the act is also an unfair or deceptive trade practice.



The commissioner may require a violator to take affirmative action to correct the violation, including by restitution.

A homeowner may also bring an action for damages:

- without having to exhaust administrative remedies; and
- regardless of the status of an administrative action or a criminal prosecution under the act.

A homeowner who is awarded damages may also receive reasonable attorneys' fees. If the court finds that the defendant willfully or knowingly violated the act, the court may award treble damages.

#### Mortgage Assistance Relief Services Act (§§ 7-502, -505, -506, -507, -510)

If a mortgage assistance relief service provider who is providing relief in connection with a Maryland dwelling does not comply with specified provisions of federal law (12 C.F.R. §§ 1015.1 through 1015.11), the provider is in violation of the state's Mortgage Assistance Relief Services Act. A violation of the act is an "unfair or deception trade practice" under Maryland's Consumer Protection Act (Title 13 of the Commercial Law Article). A violation is subject to the enforcement and penalty provisions contained in the Consumer Protection Act. The Attorney General and the Commissioner of Financial Regulation may seek an injunction to prohibit a person who violates the act from engaging in the violation. The court may enter an order or judgment:

- to prevent a prohibited practice;
- to restore to a person any money or property acquired from that person by means of a prohibited practice; or
- to appoint a receiver in the case of a willful violation of the act.

Also, a person may bring an action for damages without exhausting administrative remedies and regardless of the status of any administrative action or criminal prosecution. A court may award reasonable attorney's fees and treble damages.

Statutory sections 7-301, 7-305, 7-306, 7-307, 7-311, 7-312, 7-314, 7-315 amended 2008; §§ 7-308, 7-309, 7-310, 7-313, 7-402, 7-407, and 7-408 enacted 2008; §§7-319, 7-320, 7-401, and 7-406 amended 2011; §§ 7-404.1 and 7-319.1 enacted 2011; §§ 7-502, 7-505, 7-506, 7-507, and 7-510 enacted 2013; § 7-302 amended 2014.

[Md. Code, Real Prop. §§ 7-301, -302, -305, -306, -307, -308, -309, -310, -311, -312, -313, -314, -315, -319, -319.1, -320, -401, -402, -404.1, -406, -407, -408, -502, -505, -506, -507, -510 \(2016\)](#)

## Massachusetts

### Massachusetts, Liability for Financing Scams

#### Mortgage Fraud (§ 35A)

Massachusetts law provides penalties for mortgage fraud. A person may not:

- knowingly make a material statement that is false or contains a material omission during or in connection with the mortgage lending process, intending a mortgage lender, *borrower*, or any other party to the mortgage lending process to rely upon the statement;
- use, or facilitate the use of, any material statement that is known to be false or to contain a material omission during or in connection with the mortgage lending process, intending a mortgage lender, *borrower*, or any other party to the mortgage lending process to rely upon the statement;
- receive funds in connection with a residential mortgage closing, knowing they were obtained in violation of the above; or
- file a document that contains a material statement that is false or a material omission.

A violation of the above provisions is punishable by imprisonment in the state prison for up to five years or in the house of correction for up to 2.5 years, a fine of up to \$10,000 in the case of a natural person or \$100,000 in the case of any other person, or both a fine and imprisonment.

A *pattern* of residential mortgage fraud is punishable by imprisonment in the state prison for up to 15 years, a fine of up to \$50,000 in the case of a natural person or \$500,000 in the case of any other person, or by both a fine and imprisonment.

In this context, "mortgage lending process" refers to the process through which a person seeks or obtains a residential mortgage loan, but it does not include the foreclosure process.

#### Credit Counseling Services (§ 4A)

No person, other than an attorney or certain nonprofit charitable corporations, may render credit counseling services.

#### Mortgage Loan Servicing Practices (r. 18.21A)

A third party loan servicer may not use unfair or unconscionable means servicing a mortgage loan. The following conduct, among others, is a violation of the commonwealth's regulations regarding mortgage loan servicing practices:

- failing to comply with the statutory provisions regarding providing loan payoff information to a consumer;
- collecting private mortgage insurance beyond the date for which it is no longer required;
- failing to comply with the statutory provisions regarding the right to cure a mortgage loan default;

- knowingly or recklessly facilitating the illegal foreclosure of real property collateral; and
- failing to comply with numerous other statutory provisions regarding evaluating borrowers for loss mitigation options, concluding the modification process before initiating a foreclosure, and others.

Statutory section 4A enacted 1971; § 35A enacted 2010. Regulation adopted 2013.

[Mass. Gen. Laws ch. 180, § 4A](#); [ch. 266, § 35A \(2016\)](#); [209 Mass. Code Regs. 18.21A \(2015\)](#)

## Michigan

### Michigan, Liability for Financing Scams

#### Residential Mortgage Fraud (§ 750.219d)

A person is guilty of residential mortgage fraud if the person knowingly, with the intent to defraud, acts as follows, among other things:

- makes "a false statement or misrepresentation concerning a material fact or deliberately conceals or fails to disclose a material fact during the mortgage lending process";
- makes or uses, during the mortgage lending process, a false pretense concerning the person's intent to perform a future event or to have a future event performed;
- uses or facilitates the use of another person's false statement or misrepresentation concerning a material fact or deliberately uses or facilitates the use of another person's concealment or failure to disclose a material fact during the mortgage lending process;
- receives proceeds that resulted from the use of a false statement or misrepresentation; or

- files a document the person knows to contain a deliberate material misstatement, misrepresentation, or omission.

A person who violates this provision is guilty of a felony, generally punishable by imprisonment for up to 15 years, a fine of up to \$100,000, or both. However, if the violation occurs in connection with a loan exceeding \$100,000, the penalty is imprisonment for up to 20 years, a fine of up to \$500,000, or both. Each violation constitutes a separate offense.

Property "used or intended for use in the course of, derived from, or received in connection with a violation" by the violating person is subject to forfeiture.

In this context, "mortgage lending process" is the process through which "a person seeks or obtains a residential mortgage loan," but does not explicitly include foreclosures.

#### Fraud Related to Real Property Transfers (§ 750.218)

A person who, with the intent to defraud or cheat, causes a person to "grant, convey, assign, demise, lease, or mortgage land or an interest in land" is guilty of a crime. The severity of the crime, the potential prison term, and the applicable fine vary according to the value of the applicable land interest and other specified factors.

Statutory sections amended 2011.

[Mich. Comp. Laws §§ 750.218, .219d \(2016\)](#)

## Minnesota

### Minnesota, Liability for Financing Scams

Foreclosure Consultants (§§ 325N.01, .02, .03, .04, .06, .07)

Minnesota regulates any *foreclosure consultant*, defined as a person who directly or indirectly makes a solicitation, representation or offer to any owner to perform or performs for compensation any service which the person represents will in any manner accomplish any of the following:

- postpone or stop a foreclosure sale;
- obtain a forbearance from a beneficiary or mortgagee;
- assist the homeowner in exercising a right of reinstatement;
- obtain an extension of the period in which the homeowner may reinstate his obligation;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- assist the homeowner in foreclosure or default in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from recorded notice of default or the conduct of a foreclosure sale;
- save the owner's residence from foreclosure; or
- negotiate or modify the terms or conditions of an existing residential mortgage loan.

The law requires that a foreclosure consulting contract be in writing and subject to cancellation within three business days after execution by the homeowner.

A real estate licensee, if acting within the scope of that license, is not deemed a foreclosure consultant for purposes of the law, unless he or she "is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure." In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- directly or indirectly acquire an interest in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.

A violation of the above provisions is deemed to be a violation of Minn. Stat. § 325F.69 (regarding consumer fraud), and all remedies of Minn. Stat. § 8.31 are available. An owner may also bring an action against a foreclosure consultant for a violation of §§ 325N.01–.09. The court judgment must include "actual damages, reasonable attorney fees and costs, and appropriate equitable relief." The court may also award exemplary damages up to 1.5 times the foreclosure consultant's compensation if the court finds that the foreclosure consultant violated specified provisions (§ 325N.04(1), (2), or (4)) and acted in bad faith.

A person who violates § 325N.04 may be fined up to \$10,000, imprisoned up to one year, or both.

#### Foreclosure Reconveyances (§§ 325N.10, .11, .12, .17, .18)

The law also regulates *foreclosure reconveyances*. A "foreclosure reconveyance" is a transaction that involves:

- the transfer of an interest in a residence in foreclosure by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lien holder; and

- a subsequent conveyance, or agreement for a subsequent conveyance, of an interest in the residential real property from the acquirer or person acting in participation with the acquirer to the foreclosed homeowner that allows the homeowner to possess the residence in foreclosure or other property, which includes but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase or lease.

A "residence in foreclosure" is an owner-occupied one- to four-family unit property or owner-occupied real property that is principally used for farming as long as the owner occupies one of the parcels as his or her principal residence, where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property.

The law requires that every foreclosure reconveyance be in writing and that the homeowner may cancel the contract within five business days after execution of the agreement. The foreclosure purchaser must verify and be able to demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent reconveyance back to the foreclosed homeowner as provided by the contract or, if the contract provides for a lease with an option to repurchase, that the homeowner has a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the foreclosed homeowner, or make a payment to the homeowner such that the homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days of either the eviction or voluntary relinquishment of possession by the homeowner. Among additional requirements, the law prohibits the foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

A violation of Minn. Stat. §§ 325N.10–.17 is deemed a violation of § 325F.69, and all the remedies of § 8.31 are available. In a private action for a violation of Minn. Stat. § 325N.17, the court may award exemplary damages, if appropriate, in an amount not less than 1.5 times the foreclosed homeowner's actual damages.

A foreclosure purchaser who engages in any practice that is a "fraud or deceit upon a foreclosed homeowner" may be fined up to \$50,000, imprisoned for up to one year, or both.

Residential Mortgage Fraud (§ 609.822)



Minnesota laws prohibit "residential mortgage fraud" in the "mortgage lending process," which is defined as the process through which a person seeks or obtains a residential mortgage loan, "including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan." It does not explicitly include the foreclosure process.

A person commits residential mortgage fraud if he or she:

- "knowingly makes or causes to be made any deliberate and material misstatement, misrepresentation, or omission during the mortgage lending process," intending it to be relied on by a mortgage lender, *borrower*, or any other party to the mortgage lending process;
- "knowingly uses or facilitates the use of any deliberate and material misstatement, misrepresentation, or omission," knowing it to contain a material misstatement, misrepresentation, or omission, intending it to be relied on by a mortgage lender, *borrower*, or any other party to the mortgage lending process; or
- conspires to violate these provisions.

The sentence for a violation is as provided in Minn. Stat. § 609.52, subd. 3, "based on the aggregate economic loss suffered by any person as a result of the violation." However, the maximum sentence may not exceed two years. The court may also order a convicted person to pay restitution in addition to, but not instead of, a fine or imprisonment.

If the victim is vulnerable because of "age, infirmity, or reduced physical or mental capacity," the court may order an "aggravated departure" from the sentencing guidelines.

Statutory sections 325N.02, 325N.03, 325N.04, 325N.06, 325N.07, 325N.11, 325N.12, 325N.18, and 609.822 amended 2008; §§ 325N.01, 325N.10, and 325N.17 amended 2015.

## Mississippi

### Mississippi, Liability for Financing Scams

#### Residential Mortgage Fraud (§ 97-23-107)

A person commits "residential mortgage fraud" when, with the intent to defraud, he or she:

- knowingly makes a "deliberate misstatement, misrepresentation or omission during the mortgage lending process," intending it to be relied on by a licensed mortgage broker, mortgage lender, *borrower*, or any other party to the mortgage lending process;
- "knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation or omission," knowing it contains a misstatement, misrepresentation or omission and intending it to be relied on by a company, *borrower*, or other party to the mortgage lending process;
- receives funds in connection with a residential mortgage closing that the person knew resulted from a violation of the above;
- conspires to violate the above; or
- files a deed of trust the person knows contains a deliberate misstatement, misrepresentation, or omission.

A person violating these provisions is guilty of a felony, punishable by imprisonment for one to 10 years, a fine of up to \$5000, or both. If the violation involves a pattern of residential mortgage fraud, the violation is punishable by imprisonment for three to 20 years, a fine of up to \$100,000, or both.

Real and personal property used, intended for use, or derived from or realized through a violation of the above is subject to forfeiture to the state.

Mississippi S.A.F.E. Mortgage Act (§§ 81-18-27, -39)

A person required to be licensed under Mississippi's S.A.F.E. Mortgage Act may not, among other things,

- directly or indirectly employ a scheme to defraud or mislead borrowers or lenders or to defraud any person;
- misrepresent to or conceal from a mortgage loan applicant or mortgagor a transaction's material facts, terms, or conditions;
- engage in a transaction, practice, or course of business that "is not in good faith, or that operates a fraud upon any person in connection with the making of or purchase or sale of any mortgage loan";
- engage in any fraudulent residential mortgage underwriting practices;
- solicit or enter into a contract with a borrower that provides that a person subject to the S.A.F.E. Mortgage Act may earn a fee or commission through "best efforts" to obtain a loan even if no loan is actually obtained;
- make a residential mortgage loan with the intent to foreclose on the borrower's property;
- sign the consumer's name to a mortgage loan application or mortgage loan documents;
- knowingly falsify income or asset information on a mortgage loan application or mortgage loan documents; or

- discourage a consumer in a mortgage loan transaction from seeking or obtaining legal counsel or legal advice.

If the Department of Banking and Consumer Finance reasonably determines that a person has violated any Mississippi law, the department may issue a cease-and-desist order. If the person violates the terms of an order, he or she is liable for a civil penalty of up to \$3,000.

Statutory section 97-23-107 enacted 2007; § 81-18-27 amended and extended 2016; § 81-18-39 extended 2016.

Miss. Code §§ 81-18-27 (as amended and extended by [2016 Miss. Laws ch. 360 \(S.B. 2504\)](#)), -39 (as extended by [2016 Miss. Laws ch. 360 \(S.B. 2504\)](#)); 97-23-107 (LexisNexis 2016)

## Missouri

### Missouri, Liability for Financing Scams

#### Civil Mortgage Fraud (§§ 339.175; 443.930)

A person commits mortgage fraud when he or she, in connection with the application for or procurement of a loan secured by real estate:

- employs a device, scheme or artifice to defraud;
- makes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading;
- receives any portion of the purchase, sale or loan proceeds, or other valuable consideration paid or generated in connection with a real estate closing that the person knew involved a violation of the mortgage fraud law; or

- influences, through extortion or bribery, the development, reporting, result or review of a real estate appraisal, except that this does not prohibit a mortgage broker or lender, or real estate licensee from asking the appraiser to consider additional property information, provide further detail, substantiation or explanation of the value conclusion, or correct errors in the appraisal report.

If the Real Estate Commission believes that a real estate broker or sales person has engaged in, is engaging in or willfully taken a substantial step toward engaging in real estate fraud, or has materially aided any such act, practice, omission or course of business, it may seek injunctive relief in the circuit court. The court may impose a civil penalty of not more than \$2500 for each violation and order such other relief as deemed just, including a temporary suspension of any license issued by the Commission.

#### Criminal Mortgage Fraud (§§ 443.930; 570.310)

The same conduct described above as civil mortgage fraud, is also a class C felony (until January 1, 2017, at which time it will be a class D felony), with each violation constituting a separate offense.

Statutory sections 339.175 and 443.930 enacted 2008; § 570.310 amended 2014.

[Mo. Rev. Stat. §§ 339.175; 443.930; 570.310 \(2015\)](#)

## Montana

### Montana, Liability for Financing Scams

#### Debt Settlement Providers

Montana regulates debt settlement providers and services. A "debt settlement provider" is any person or entity engaged in the business of debt settlement for compensation that does not in the usual course of business hold, receive or disburse the debtor's funds. Among other duties, a debt settlement provider must maintain mandated levels of insurance, maintain books and records, make specified written disclosures to debtors before entering into contracts with them and limit its fees as provided by law.

While a real estate licensee is not explicitly included or excluded from the purview of the law, he or she should know that the law bans payment of any cash, fee, gift, bonus, premium, reward or other compensation to the debt settlement provider from any person other than the debtor or a person on the debtor's behalf for performing debt settlement services.

A violation is punishable by "any necessary order or judgment, including an injunction, restitution, and an award of reasonable attorney fees and costs for the investigation and litigation of the violations." The attorney general or county attorney may accept an assurance of discontinuance of a violating method, act, or practice, and the court may award a civil penalty of up to \$10,000 for a violation of that assurance. A violation of § 30-14-2102 or § 30-14-2103 is deemed to be a violation of § 30-14-103, and a debtor is entitled to any remedy available pursuant to title 30, chapter 14, part 1 of the Montana Code, or other applicable state law.

Statutory sections enacted 2009.

[Mont. Code Ann. §§ 30-14-2101, -2102, -2103, -2104 \(2015\)](#)

## Nebraska

### Nebraska, Liability for Financing Scams

#### Foreclosure Protection Act

##### *Foreclosure Consultants*

Nebraska regulates any *foreclosure consultant*, defined as a person who does not directly or indirectly or through an associate, take or acquire any interest in or title to the residence in foreclosure and in the course of his or her business, vocation or occupation makes a solicitation, representation or offer to a homeowner to perform, in exchange for compensation from the proceeds of any loan or advance of funds, a service which the person represents will:

- postpone or stop a foreclosure sale;
- obtain a forbearance from a beneficiary under a deed of trust, mortgage or other lien;

- assist the homeowner in exercising a right to cure a default;
- obtain an extension of the period in which the homeowner may cure a default;
- obtain the waiver of an acceleration clause that is contained in an evidence of debt secured by a mortgage, deed of trust or other lien on a residence in foreclosure or contained in such document;
- assist the homeowner in obtaining a loan or advance of funds;
- avoid or reduce an impairment of the homeowner's credit resulting from recorded notice of election and demand for sale, commencement of a judicial foreclosure action, any foreclosure sale or granting of a deed in lieu of foreclosure, or any other late payment or other failure to pay or perform under the evidence of debt, deed of trust or other lien securing it;
- in any way delay, hinder or prevent the foreclosure of the homeowner's residence; or
- assist the homeowner in obtaining the remaining or excess proceeds from the foreclosure sale of the residence.

The law requires a foreclosure consulting contract to be in writing and subject to cancellation by the homeowner at any time.

A real estate licensee, while engaged in any activity for which he or she is licensed, is not deemed a foreclosure consultant for purposes of the law. In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed in writing to the homeowner; or
- directly or indirectly, or through an associate, acquire an interest in the real or personal property of a homeowner with whom the foreclosure consultant has contracted.

### *Equity Purchase Contracts*

The law also regulates *equity purchase contracts*. An “equity purchase contract” is an agreement between a homeowner and an equity purchaser pertaining to the acquisition of title to the homeowner's personal residence. Subject to specified exceptions, an equity purchaser is a person who, in the course of his or her business, occupation, or vocation, acquires title to a residence in foreclosure.

The law requires that every foreclosure reconveyance be in writing and that the homeowner may cancel the contract within three business days after the homeowner's execution of the agreement or until the last business day before the foreclosure sale of the residence in foreclosure, whichever occurs first. Among many additional requirements, the law prohibits the foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

### *Violations*

A violation of any provision of the Nebraska Foreclosure Protection Act is a Class IV felony.

Statutory sections enacted 2008.

[Neb. Rev. Stat. §§ 76-2705, -2706, -2708, -2713, -2714, -2716, -2719, -2721, -2723, -2725, -2728 \(2015\)](#).

## Nevada

### Nevada, Liability for Financing Scams



## Mortgage Fraud (§§ 205.372, .395)

A person who is a participant in a mortgage lending transaction commits mortgage fraud if the person does any of the following:

- knowingly makes a false statement or misrepresentation concerning a material fact or knowingly conceals or fails to disclose a material fact;
- knowingly uses or facilitates the use of a false statement or misrepresentation made by another person concerning a material fact or knowingly uses or facilitates the use of another person's concealment or failure to disclose a material fact;
- receives any proceeds or any other funds in connection with a mortgage lending transaction that the person knows resulted from any of the above described violations;
- conspires to violate any of the provisions above; or
- files or causes to be filed with the county recorder, any document that the person knows contains a misstatement, misrepresentation or omission of a material fact.

A violation is a category C felony punishable by a fine of not more than \$10,000 and/or imprisonment for a minimum of one year and a maximum of up to 10 years.

A person who violates the above provisions is also subject to a civil penalty of up to \$5000 for each violation, plus reasonable attorneys' fees and costs. In addition, the owner or holder of the beneficial interest may bring a civil action to recover damages, plus reasonable attorneys' fees and costs.

A person who makes a false representation concerning title is guilty of a category C felony.

Foreclosure Consultants and Reconveyances (§§ 645F.310, .320, .340, .380, .390, .392, .398, .400, .410, .420, .430, .440)

### *Foreclosure Consultants*

Nevada regulates any *foreclosure consultant*, defined as a person who directly or indirectly makes a solicitation, representation or offer to any homeowner to perform, or performs, for compensation any service which the person represents will in any manner accomplish any of the following:

- prevent or postpone a foreclosure sale;
- obtain a forbearance from a beneficiary of a deed of trust or mortgagee;
- assist the homeowner in exercising a right of reinstatement provided in the legal documents;
- obtain an extension of the period in which the homeowner may reinstate his obligation;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage or deed of trust;
- assist the homeowner in foreclosure or loan default in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from recorded notice of default or the conduct of a foreclosure sale;
- save the owner's residence from foreclosure; or

- assist the homeowner to obtain a foreclosure reconveyance.

The law requires that foreclosure consultants be licensed by the Commissioner of Mortgage Lending.

A real estate licensee is no longer among the persons or entities exempted from the foreclosure consultant law. Even if a real estate licensee's activities do not require licensure as a foreclosure consultant, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A person who performs a covered service may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- directly or indirectly acquire any interest in a residence or other security for the payment of compensation.

A real estate licensee may be subject to regulation as "*a person who performs any covered service.*" A "covered service" is defined, without limitation, as:

- financial counseling to a homeowner, including, without limitation, debt counseling and budget counseling;
- receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a residence in foreclosure;
- contacting a creditor on behalf of a homeowner;
- arranging or attempting to arrange for an extension period within which a homeowner may cure his default and reinstate his obligation pursuant to a note, mortgage or deed of trust;

- arranging or attempting to arrange for any delay or postponement of the time for a foreclosure sale of a residence in foreclosure;
- advising a homeowner regarding the filing of any document or assisting in any manner in preparing any document for filing with a bankruptcy court;
- giving any advice, explanation or instruction to a homeowner which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a mortgage or other lien on a residence, the full satisfaction of the obligation, or the postponement or avoidance of a foreclosure sale;
- arranging or conducting for a homeowner "any forensic loan audit or review or other audit or review of loan documents";
- arranging or attempting to arrange for a homeowner the purchase of the homeowner's mortgage loan by a third party;
- arranging or attempting to arrange for a homeowner a reduction of his or her principal if the loan is held by or serviced by a third party; or
- providing loan modification consultant or foreclosure consultant services.

A person who performs any covered service for compensation must do so pursuant to a written contract and must be licensed by the Commissioner of Mortgage Lending.

A person who performs a covered service for compensation, a foreclosure consultant and a loan modification consultant must provide specified notices and disclosures.

*Foreclosure Reconveyances*

The law also regulates *foreclosure reconveyances*. A “foreclosure reconveyance” is a transaction that involves:

- the transfer of title to a residence in foreclosure by a homeowner during a foreclosure proceeding, either by transfer of an interest from the homeowner or by creation of a mortgage or other lien during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and
- a subsequent conveyance, or promise of a subsequent conveyance, of an interest in the residence from the acquirer, or person acting in concert with the acquirer, to the former homeowner that allows the former homeowner to remain in the residence following completion of the foreclosure proceeding.

### *Penalties*

A foreclosure purchaser who engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a covered service or a foreclosure reconveyance is guilty of a gross misdemeanor, punishable by imprisonment for up to 364 days and/or a fine of up to \$50,000. In addition, the homeowner may rescind, within two years, the subject transaction in which the foreclosure purchaser acquired title to the residence in foreclosure.

In addition, the Commissioner, after notice and hearing, may impose an administrative penalty of up to \$25,000. A homeowner who is injured as a result of a person's violation of Nev. Rev. Stat. § 645F.400 may bring an action to recover damages, attorneys' fees, and costs. If the homeowner prevails, the court may award punitive damages in an amount no less than one and one-half times the actual damages.

Statutory sections 645F.320 and 645F.340 enacted 2007; §§ 645F.310, 645F.390, 645F.392, 645F.400, 645F.410, 645F.420, and 645F.440 amended 2011; § 645F.398 enacted 2011; §§ 645F.380 and 645F.430 amended 2013; § 205.395 and 205.372 amended 2015.

[Nev. Rev. Stat. §§ 205.372, .395; 645F.310, .320, .340, .380, .390, .392, .398, .400, .410, .420, .430, .440 \(2015\)](#)

New Hampshire

## New Hampshire, Liability for Financing Scams

Foreclosure Consultants and Pre-Foreclosure Conveyances (§§ 479-B:1, :2, :3, :4, :5, :8, :9, :11)

### *Foreclosure Consultants*

New Hampshire regulates any *foreclosure consultant*, defined as any person, or any person acting in concert with such person, who provides a "foreclosure consulting service," which means any of the following:

- an effort undertaken for the benefit of or on behalf of a homeowner to prevent or delay the loss of a home because of a mortgage default, delinquency, foreclosure or execution of a tax deed;
- receiving money for distribution to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;
- contacting mortgagees or other creditors secured by the homeowner's primary residence on the homeowner's behalf;
- arranging or attempting to arrange for an extension of the period in which the homeowner may cure a default and reinstate his obligation;
- arranging or attempting to arrange for any delay or postponement the sale of a residence in foreclosure;
- arranging or facilitating the purchase of the homeowner's legal or equitable title or any property interest in the homeowner's residence within 30 days of the publication or notice letter of a foreclosure sale or the letter notice of a municipality's intent to execute a tax deed;

- arranging or facilitating any transaction in which the homeowner will become a lessee, optionee, life tenant, partial homeowner or vested or contingent remainderman of the homeowner's residence;
- arranging for the homeowner to have an option to repurchase the residence after a sale or transfer; or
- arranging for or facilitating a homeowner remaining in the residence as a tenant, renter or lessee.

The law requires that a foreclosure consulting contract be in writing and subject to cancellation at any time by the homeowner. A foreclosure consultant has a fiduciary duty to the homeowner who retains his or her services.

A real estate licensee, while engaged in any activity for which the person is licensed, is not deemed a foreclosure consultant for purposes of the law. In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed in writing to the homeowner and the third party's interest does not conflict with the homeowner's or create a conflict between the homeowner and the consultant; or
- directly or indirectly, or through a subsidiary, affiliate or corporation through which the consultant or member of his or her immediate family is a primary stockholder, acquire an interest in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.

#### *Pre-foreclosure conveyances*

The law also regulates *pre-foreclosure conveyances*. A "pre-foreclosure conveyance" is a transaction that involves:

- the transfer of a title to real property or a beneficial interest in the property by a homeowner to prevent a mortgage default or delinquency, foreclosure or execution of a tax deed, either by transfer of interest from the homeowner or by creation of a mortgage, trust or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and
- (a) a subsequent conveyance, or promise or right to a subsequent conveyance, of an interest in, from the acquirer, or person acting in participation with the acquirer, back to the homeowner, which interest includes an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, trust, option to purchase, sale/leaseback or other contractual arrangement; or (b) the transaction does not pay or otherwise fully satisfy the homeowner's obligations under any existing note and mortgage securing such note.

The law requires that every pre-foreclosure conveyance be in writing and entitled "notice of loss of ownership" and that the homeowner may cancel the contract within five business days after the later of any conveyance or transfer in any manner of a legal or equitable property interest in a residence in foreclosure, or delivery of the notices required for pre-foreclosure conveyances. The foreclosure purchaser must verify and be able to demonstrate that the foreclosed homeowner has or will have a reasonable ability to pay for the subsequent reconveyance back to the foreclosed homeowner on completion of the terms of a pre-foreclosure conveyance or, if the contract provides for a lease with an option to repurchase, that the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the homeowner in a timely manner if the law or the terms of a pre-foreclosure conveyance require a reconveyance, or make a payment to the homeowner within 90 days of any resale of the property such that the homeowner has received cash payments or consideration in an amount of at least 90 percent of the net proceeds from any resale.

Among additional requirements, the law prohibits the pre-foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

### *Penalties*



A violation of chapter 479-B is deemed to be a violation of the New Hampshire consumer protection act, and all remedies of the consumer protection act are available. Also, a person who violates a provision of chapter 479-B is guilty of a class A misdemeanor.

Note that as of August 6, 2011, chapter 479-B does not apply to certain short sales.

Debt Adjustment Services (§§ 399-D:2, :3, :13-a, :23, :24, :24-a (effective until January 1, 2017); 399-D:1, :2, :13-a, :20, :21 (effective as of January 1, 2017))

*Effective until January 1, 2017*

A person engaging in the debt adjustment business in New Hampshire (or with persons located in New Hampshire) must obtain a license from the banking department. A person not exempt under § 399-D:4 engaging in a mortgage loan modification activity as a debt adjustment service must obtain a mortgage license from the banking department pursuant to § 397-A. In this context, "debt adjustment" means:

- providing debt management advice or counseling to consumers for compensation;
- creating debt management plans for consumers for compensation;
- negotiating with creditors on behalf of a consumer for compensation;
- receiving, for a fee or compensation and as a debtor's agent, money to distribute among creditors in full or partial payment of the debtor's obligations;
- otherwise engaging in the debt adjustment business; or

- serving as an intermediary between a consumer and one or more creditors in order to obtain concessions.

It is unlawful for a person, in connection with the solicitation, offer, or implementation of a debt adjustment service:

- to "employ any device, scheme, or artifice to defraud";
- to make any untrue statement of a material fact or to omit a material fact that is necessary in order to make a statement not misleading; or
- to engage in "any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

The banking department may issue a cease and desist order against any licensee or person who it reasonably believes is in violation of chapter 399-D. If a person refuses to obey the commissioner's order, the attorney general may bring an action to enjoin that person from engaging in or continuing a violation. An order or judgment may be entered awarding a temporary or permanent injunction. The commissioner or the attorney general (or both) may also be awarded costs. The court may "enforce obedience to such injunction" by assessing a fine not exceeding \$10,000, by imprisonment, or both.

A person who violates any provision of chapter 399-D is guilty of a misdemeanor for each violation if a natural person, or guilty of a felony if any other person. Generally, a person who *knowingly* violates any rule or order may, except where another penalty is expressly provided, be subject to suspension or revocation of his or her registration or license or be subject to an administrative fine of up to \$2,500 for each violation. A person who *negligently* violates any rule or order may be subject to suspension, revocation, or denial of any registration or license, or be subject to the imposition of an administrative fine of up to \$1,500 for each violation.

A person who "willfully violates any provisions of RSA 399-D:13-a, I or II or a cease and desist order or injunction issued pursuant to RSA 399-D:23 II" is guilty of a class B felony.

*Effective as of January 1, 2017*

A nonexempt person engaging in a debt adjustment business in New Hampshire (or with persons located in New Hampshire) must obtain a license from the banking department. In this context, "debt adjustment" means:

- providing debt management advice or counseling to debtors for compensation;
- creating debt adjustment contracts for debtors for compensation;
- negotiating with creditors on behalf of a debtor for compensation;
- receiving, for compensation and as a debtor's agent, money to distribute among creditors in full or partial payment of the debtor's obligations, or to supervise, coordinate, or control the distribution of the same;
- otherwise engaging in the debt adjustment business; or
- serving as an intermediary between a consumer and one or more creditors in order to obtain concessions.

No person, in connection with a debt adjustment business, may:

- "employ any device, scheme, or artifice to defraud";
- make any untrue statement of a material fact or omit a material fact that is necessary to make a statement not misleading;

- engage in "any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person";
- make fraudulent misrepresentations or circumvent or conceal any material information required to be provided to a debtor; or
- engage in dishonest or unethical practices in conducting the debt adjustment business.

Also, no person may:

- make or cause to be made in any filed document or in any proceeding a statement that is false or misleading in any material respect; or
- omit to state a material fact necessary to make the statements not misleading.

Additional acts are prohibited.

The banking department may issue a cease and desist order against any licensee or person who it reasonably believes is violating chapter 399-D. If a person refuses to obey the commissioner's order, the attorney general may bring an action to enjoin that person from engaging in or continuing a violation. An order or judgment may be entered awarding a temporary or permanent injunction. The commissioner or the attorney general (or both) may also be awarded costs. A person who fails to comply with an injunction is subject to a fine not exceeding \$10,000, imprisonment, or both.

A person who knowingly violates any provision of chapter 399-D is guilty of a misdemeanor for each violation if a natural person, or guilty of a felony if any other person. Generally, a person who *knowingly* violates any rule or order may, except where another penalty is expressly provided, be subject to suspension or revocation of his or her registration or license or be subject to an administrative fine of up to \$2,500 for each violation. A person who *negligently* violates any rule or order may be subject to suspension, revocation, or denial of any registration or license, or be subject to the imposition of an administrative fine of up to \$1,500 for each violation.

A person who "willfully violates any provisions of RSA 399-D:13, I or II or a cease and desist order or injunction issued pursuant to RSA 399-D:20" is guilty of a class B felony.

Statutory sections 479-B:2, 479-B:3, 479-B:4, 479-B:5, 479-B:8, and 479-B:9 enacted 2007; §§ 479-B:1 and 479-B:11 amended 2011; §§ 399-D:2, 399-D:3, 399-D:13-a, 399-D:23, 399-D:24, and 399-D:24-a amended, reenacted, and renumbered 2015, effective January 1, 2017.

[N.H. Rev. Stat. Ann. §§ 399-D:2, :3, :13-a, :23, :24, :24-a](#) (effective until January 1, 2017); 399-D:1, :2, :13-a, :20, :21 (as amended, renumbered, and reenacted by [2016 N.H. Laws ch. 151](#); effective as of January 1, 2107); [479-B:1, :2, :3, :4, :5, :8, :9, :11 \(2015\)](#)

## New Jersey

### New Jersey, Liability for Financing Scams

Foreclosure Rescue Fraud Prevention Act (§§ 10B-54, -55, -56, -58, -59, -67)

New Jersey's Foreclosure Rescue Fraud Prevention Act became effective on June 17, 2012. A "foreclosure consultant" is a person who, for compensation from an owner, solicits, represents, offers to perform, or performs any of the following related to an owner's distressed property:

- prevent or postpone the property's foreclosure sale;
- obtain forbearance from a mortgagee;
- assist the owner in exercising a reinstatement or redemption right;
- obtain an extension of the period within which the owner may reinstate his or her owner's rights;
- obtain a waiver of an acceleration clause contained in any promissory note, contract, or mortgage evidencing or securing a debt related to the property;

- assist the owner in obtaining a loan or an advance pay off of the promissory note, contract, or mortgage that evidences or secures a debt related to the property;
- avoid or ameliorate adverse effects on the owner's credit resulting from a default or a foreclosure sale; or
- offer to repair the owner's credit.

In this context, a "distressed property" is residential real property consisting of one to four dwelling units, at least one of which is occupied by its owner as a primary residence and which is "the subject of a mortgage foreclosure proceeding or whose owner is more than 90 days delinquent on any loan" secured by the property.

A foreclosure consultant may not conduct business in New Jersey until the consultant obtains a license from the Commissioner of Banking and Insurance.

A foreclosure consultant contract must be written in plain language and fully disclose the exact nature of the foreclosure consultant's services, the foreclosure consultant's representations, the relief to be secured, and the amount and terms. The consultant contract must also include statutory language and meet other requirements set forth in § 46:10B-56.

Among other prohibited acts, a foreclosure consultant may not:

- claim, demand, charge, collect, or receive compensation until after the foreclosure consultant has fully performed every contracted service and secured the distressed property relief for the owner;
- receive compensation in excess of the lesser of (a) two monthly mortgage payments of principal and interest, or (b) "the most recent quarterly property tax installment on the distressed property";

- take security to secure the payment of compensation;
- acquire any interest in the subject distressed property; or
- induce or attempt to induce an owner to enter into a contract that does not comply with the relevant law.

A foreclosure consultant may not attempt to induce an owner to waive the owner's rights under the act.

A person who violates any provision of the act is:

- liable for a penalty of up to \$10,000 for the first offense and \$20,000 for the second and each subsequent offense; and
- guilty of a crime of the third degree.

A person who violates a provision of the act in connection with a pattern of foreclosure rescue fraud (or a conspiracy or endeavor to engage in a pattern of foreclosure rescue fraud) is guilty of a crime of the second degree. An owner may bring an action in Superior Court against a foreclosure consultant or a distressed property purchaser for any violation of the act and for treble damages, attorney's fees, costs, and equitable relief. The remedies and rights are cumulative, and all other remedies or rights provided by law, including those under the doctrine of equitable mortgage or pursuant to the "Fair Foreclosure Act," are preserved. The consumer fraud act may also apply.

Debt Adjusters (§§ 2C:21-19; 17:16G-2)

Generally, unless exempt, a person who acts or offers to act as a debt adjuster without a license is "guilty of a crime of the fourth degree." Only a nonprofit social service agency or a nonprofit consumer credit counseling agency may act as a debt adjuster.

#### Disorderly Persons Offense (§§ 2C:21-19)

A person is guilty of a "disorderly persons offense" when, in order to enforce a claim or judgment, he or she sends another a notice, document, or other instrument that:

- has no judicial or official sanction and that simulates a summons, complaint, court order, or process;
- contains a simulated government insignia; or
- is otherwise "calculated to induce a belief that such notice, document or instrument has a judicial or official sanction."

Statutory section 2C:21-19 amended 2009; § 17:16G-2 amended 1986; §§ 46:10B-54, 46:10B-55, 46:10B-56, 46:10B-58, 46:10B-59, and 46:10B-67 enacted 2011.

N.J. Stat. §§ 2C:21-19; 17:16G-2; 46:10B-54, -55, -56, -58, -59, -67 (2016)

## New Mexico

### New Mexico, Liability for Financing Scams

#### Mortgage Foreclosure Consultant Fraud Prevention Act (§§ 47-15-2, -3, -4, -5, -7, -8)

New Mexico's Mortgage Foreclosure Consultant Fraud Prevention Act regulates mortgage foreclosure consultants. A "foreclosure consultant" is a person who, directly or indirectly, offers to perform or performs services for compensation that the person represents will:



- stop or postpone a foreclosure sale;
- obtain forbearance from a beneficiary or mortgagee;
- assist the owner in exercising reinstatement rights;
- extend the reinstatement period;
- obtain a waiver of an acceleration clause;
- assist an owner in foreclosure or loan default to obtain a loan;
- avoid or ameliorate any credit-rating impairment resulting from a notice of default or foreclosure sale; or
- save an owner's residence from foreclosure.

A foreclosure consultant does *not* include, among others, a licensed real estate broker or salesperson engaged in acts requiring a real estate license, unless "the person is offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure."

A foreclosure consulting contract must:

- be provided to the owner for review at least 24 hours before signature;
- be printed in at least 14-point type and written in the same language that was used by the owner in discussions with the foreclosure consultant;

- fully disclose the nature and extent of the services to be provided and the total amount and terms of any compensation;
- disclose the names of any other entities on behalf of which the consultant does business or with which the consultant is affiliated or employed;
- separately itemize all costs, fees, or expenses and their purposes;
- be dated and personally signed by both parties; and
- contain the mandatory statutory notice.

An owner may rescind a foreclosure consulting contract until midnight of the third business day following the day the owner signs the contract.

The act limits and regulates a foreclosure consultant's compensation and certain acts. A violation of the act constitutes an unfair trade practice. A prevailing plaintiff may recover actual damages, reasonable attorney fees, costs, and "appropriate equitable relief." A court may also award exemplary damages up to three times the foreclosure consultant's compensation, if the court finds that the foreclosure consultant violated a provision N.M. Stat. § 47-15-5 (enumerating violations) and that the foreclosure consultant's conduct was willful or in bad faith.

A person who violates N.M. Stat. § 47-15-5 is guilty of a fourth degree felony. Each violation is a separate offense.

#### Debt Adjusters (§ 56-2-2)

Generally, a person who acts or offers to act as a debt adjuster is guilty of a misdemeanor.

Statutory section 56-2-2 enacted 1965; §§ 47-15-2, 47-15-3, 47-15-4, 47-15-5, 47-15-7, and 47-15-8 enacted 2010.

N.M. Stat. §§ 47-15-2, -3, -4, -5, -7, -8; 56-2-2 (2015)

## New York

### New York, Liability for Financing Scams

Residential Mortgage Fraud (§§ 187.00, .01, .05, .10, .15, .20, .25)

A person commits residential mortgage fraud when the person knowingly and with intent to defraud presents, causes to be presented or prepares with knowledge or belief that it will be used to soliciting an applicant, applying for the underwriting or closing of a residential mortgage loan, or filing documents arising out and related to the closing of a residential mortgage loan, any written statement the person knows to contain materially false information concerning any fact material thereto, or conceal, for the purpose of misleading, information concerning any fact material thereto.

Residential mortgage fraud is a misdemeanor, or felony of varying degrees, depending on the amount of proceeds or funds the violator receives. An individual who applies for a residential mortgage loan and intends to occupy the mortgaged property may not be held liable, unless he or she acts as an accessory to another committing the crime, in which case the individual may be charged as an accessory.

Distressed Property Consultants and Equity Purchases (§§ 265-a, -b)

New York regulates any *distressed property consultant*, defined as an individual or entity that directly or indirectly solicits or undertakes employment to provide "consulting services to a homeowner for compensation or the promise of compensation, with respect to a distressed home loan or a potential loss of the home for nonpayment of taxes. "Consulting services" means services that the consultant represents will achieve any of the following:

- postpone, delay, stop, set aside, annul, void, enjoin or stay a foreclosure filing, foreclosure sale or loss of the home for nonpayment of taxes;

- obtain forbearance from any servicer, beneficiary or mortgagee or relief with respect to the loss of the home due to nonpayment of taxes;
- assist the homeowner to exercise a right of reinstatement or similar right provided in any law or the mortgage documents, or to refinance a distressed home loan;
- obtain an extension of the period within which the homeowner may reinstate or restore rights with respect to the property;
- obtain a waiver of an acceleration clause contained in any note or contract secured by a mortgage on a property in foreclosure;
- assist the homeowner to obtain a loan or advance of funds;
- assist the homeowner in answering or responding to a summons and complaint, or providing information regarding the foreclosure complaint or process;
- avoid or ameliorate the impairment of the homeowner's credit resulting from commencement of a foreclosure proceeding or tax sale; or
- save the homeowner's property from foreclosure or loss for nonpayment of taxes.

The law requires that a distressed property consulting contract be in writing and subject to cancellation by the homeowner, without penalty, within five business days of execution of the contract. A foreclosure consultant has a fiduciary duty to the homeowner who retains his or her services. All advertisements distributed by a distressed property consultant must include a statement that the New York State Housing Counselors, who are approved by the U.S. Department of Housing & Urban Development or the New York State Banking Department, may provide the same or similar services for free.

A real estate licensee is not among the persons or entities exempted from the law.

The law also regulates *equity purchasers*, defined as a person who acquires any property in foreclosure or, where applicable, in default, or his or her representative, but the term does not include, among others, a person who acquires title to use such property as his or her primary residence or a bona fide purchaser or encumbrancer for value. A "representative" is a person who in any manner solicits, induces, arranges or causes any equity seller to transfer title, or solicits any member of the seller's family to induce or cause a transfer of title of the residence in foreclosure, or where applicable, default to the equity purchaser.

For purposes of the statute, a "covered contract" is defined as any contract, agreement or arrangement or any term thereof between an equity purchaser and equity seller which is incident to the sale of a residence in foreclosure, or incident to the sale of a residence in foreclosure or default where a reconveyance arrangement is included. A "reconveyance arrangement" is a transaction that involves:

- the transfer of title to residential real property by an equity seller in default or foreclosure either by the seller to an equity purchaser or by creation of a mortgage or other lien or encumbrance during the time of default or foreclosure that allows the purchaser to obtain legal or equitable title to all or part of the property; and
- the subsequent conveyance, or promise of a subsequent conveyance, of an interest from the equity purchaser back to the equity seller that allows the equity seller to regain possession of the property, which interest includes, but is not limited to a purchase agreement, option to purchase, or lease.

The law requires that every covered contract be in writing and that the equity seller may cancel the contract within five business days following the day on which the equity seller and equity purchaser signed the contract. The equity purchaser must verify by appropriate documentation that the equity seller has or will have a reasonable ability to pay for the subsequent reconveyance back to the equity seller or, if the contract provides for a lease with an option to repurchase, that the homeowner has or will have a reasonable ability to repurchase the property within the option term.

The law also provides that an equity purchaser must either ensure that title to the property is reconveyed to the equity seller, or make a payment to the equity seller, within 120 days of either the eviction or voluntary relinquishment of possession of the residence by the equity seller, such that the homeowner has received cash payments or consideration in an amount of at least 82

percent of the fair market value of the property. Among additional requirements, the law prohibits the equity purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

#### Certificate of Merit in Certain Residential Foreclosures (§ 3012-B)

In a residential foreclosure action involving a home loan in which the defendant is a resident of the subject property, the complaint must be accompanied by specified documents and a certificate, signed by the plaintiff's attorney, certifying:

- that the attorney has reviewed the facts of the case; and
- that based on consultation with identified representatives of the plaintiff and the attorney's review of all pertinent documents, to the "best of such attorney's knowledge, information and belief there is a reasonable basis for the commencement of such action" and that the plaintiff is the creditor entitled to enforce rights under the relevant documents.

If a plaintiff willfully fails to provide copies of these required documents and papers and the court finds that they should have been provided, the court may:

- dismiss the complaint; or
- make a "final or conditional order with regard to such failure as is just including but not limited to denial of the accrual of any interest, costs, attorneys' fees and other fees, relating to the underlying mortgage debt."

Statutory sections 187.05, 187.10, 187.15, 187.20, and 187.25 enacted 2008; § 187.00 amended 2009; § 187.01 enacted 2009; § 265-a amended 2011; § 265-b amended 2012; § 3012-B amended 2013.

## North Carolina

### North Carolina, Liability for Financing Scams

#### Mortgage Fraud (§§ 14-118.11, .12, .15)

Any person commits residential mortgage fraud if, with the intent to defraud and for financial gain, he or she:

- knowingly makes or attempts to make a material misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, mortgage broker, borrower or any other person or entity involved in the mortgage lending process;
- knowingly uses or facilitates or attempts to use or facilitate the use of any material misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, mortgage broker, borrower or any other person or entity involved in the mortgage lending process;
- receives or attempts to receive any proceeds or any other funds in connection with a residential mortgage loan closing that the person knew or should have known resulted from either of the above described violations;
- conspires or solicits another to violate any of the provisions above; or
- knowingly files a document "falsely claiming that a mortgage loan has been satisfied, discharged, released, revoked, or terminated or is invalid."

Note: It is sufficient in proving any violation to show that the accused did the act with the intent to deceive or defraud. It need not be shown that any particular person or entity was harmed financially in the transaction or that the person or entity to whom the misrepresentation, misstatement or omission was made relied upon it.

A violation involving a single mortgage loan is a Class H felony, and a violation involving a pattern of residential mortgage fraud is a Class E felony.

"Mortgage lending process" is the process through which a person seeks or obtains a mortgage loan, including solicitation, application, origination, negotiation of terms, underwriting, signing, closing, and funding of the loan and services provided incident to a mortgage loan, including the appraisal of the property.

#### Debt Adjusting (§§ 14-423, -424)

North Carolina generally prohibits debt adjusting, which is defined, in part, as including "the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of payment of any debtor, whether or not the person distributes the debtor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full."

It is a Class 2 misdemeanor to act, offer to act or attempt to act as a debt adjuster.

#### Home Foreclosure Rescue Scams (§§ 75-120, -121, -122)

North Carolina law prohibits certain foreclosure rescue transactions. Generally, it is unlawful for a person or entity to "engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain," unless, before or at the time of transfer, the transferee pays the transferor at least 50 percent of the property's fair market value. Every contract for a foreclosure rescue transaction in which the transferee pays at least 50 percent of the property's fair market value must be in writing and contain all agreed terms, including those required by statute.

A foreclosure rescue transaction is exempt if the transferee is:



- a member of the transferor's immediate family;
- a state, federal, or local government agency or organization;
- a financial institution; or
- a licensed mortgage lender or mortgage servicer.

As revised effective October 1, 2015, a "foreclosure rescue transaction" is a transfer of residential real property that meets all of the following requirements:

- the real property is the transferor's principal residence;
- the transferee, an agent, or others acting in concert with the transferee "make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence"; and
- the transferor retains a tenancy interest, an interest under a lease with a purchase option, or an option to reacquire the property.

A violation of the home foreclosure rescue laws is an unfair trade practice. A homeowner may bring an action to recover damages, to void a prohibited foreclosure rescue transaction, and to obtain declaratory or equitable relief.

Statutory sections 14-424 amended 1994; § 14-423 amended 2007; §§ 14-118.11 and 14-118.15 enacted 2007; § 75-122 enacted and amended 2010; § 14-118.12 amended 2012; §§ 75-120 and 75-121 amended 2015.

[N.C. Gen. Stat. §§ 14-118.11, .12, .15; -423, -424; 75-120, -121, -122 \(2015\)](#)

## North Dakota

### North Dakota, Liability for Financing Scams

No generally applicable provisions were located. However, a money broker may not knowingly act as follows:

- "employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person";
- engage in any unfair or deceptive practice;
- solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available; or
- make a false or deceptive statement or representation, "including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising."

A person who violates this provision is guilty of a class C felony. The commissioner may impose a civil penalty of up to \$5,000 per violation.

Statutory section 13-04.1-13 amended 2001; § 13-04.1-09 amended 2015.

[N.D. Cent. Code §§ 13-04.1-09, -13 \(2015\)](#)

## Ohio

### Ohio, Liability for Financing Scams

No specifically relevant provisions were located. However, a supplier may not commit an unconscionable act or practice in a consumer transaction connected with a residential mortgage. A "supplier" is a "seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer." If the consumer transaction is in connection with a residential mortgage, "supplier"

generally does not include an assignee or purchaser of the loan for value. The following acts, among others, are unconscionable:

- engaging in a pattern or practice of providing consumer transactions to consumers based predominantly on the supplier's realization of the foreclosure or liquidation value of the consumer's collateral, without regard to the consumer's ability to repay the loan;
- making a consumer transaction that permits the creditor to demand repayment of a mortgage loan's outstanding balance before the loan's original maturity date, unless the creditor does so in good faith due to the consumer's failure to abide by the loan's material terms;
- instructing the consumer to ignore the supplier's written information regarding the interest rate and dollar value of points because they would be lower for the consumer's consumer transaction;
- recommending or encouraging a consumer to default on a mortgage;
- charging a late fee more than once for a single late payment;
- arranging for or making a consumer transaction that includes terms under which more than two periodic payments required under the consumer transaction are consolidated and paid in advance from the loan proceeds;
- knowingly compensating, instructing, inducing, coercing, or intimidating a person licensed or certified under chapter 4763 "for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan";
- knowingly or intentionally engaging in the act or practice of "flipping" a mortgage loan;

- knowingly taking advantage of a consumer's inability to reasonably protect the consumer's interests because of the consumer's known physical or mental infirmities or illiteracy;
- entering into a consumer transaction knowing there is no reasonable probability the consumer could pay the obligation; or
- attempting to enforce an illegal prepayment penalty.

If the attorney general has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates chapter 1345, the attorney general may:

- bring an action to obtain a declaratory judgment that the act or practice violates specified laws or an action to obtain a temporary restraining order, preliminary injunction, or permanent injunction; or
- impose a civil penalty of not more than \$5000 for each day of violation of a temporary restraining order, preliminary injunction, or permanent injunction issued, if the supplier received notice of the action.

If the court issues a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent an act or practice that is a violation of section 1345.02, the court may impose a civil penalty of not less than \$5000 and not more than \$15,000 for each day of violation of the temporary restraining order, preliminary injunction, or permanent injunction, provided the supplier received notice of the action.

A court may also:

- appoint a referee or a receiver;
- sequester assets;

- reimburse damaged consumers;
- carry out a transaction in accordance with a consumer's reasonable expectations;
- strike or limit the application of unconscionable clauses so as to avoid an unconscionable result; or
- grant other appropriate relief.

The court may assess the expenses of a referee or receiver against the supplier.

In certain circumstances, the court may impose a civil penalty of not more than \$25,000 against the supplier.

Statutory section 1345.031 enacted 2007; § 1345.07 amended 2011; § 1345.01 amended 2012.

[Ohio Rev. Code §§ 1345.01, .031, .07 \(2015\)](#)

## Oklahoma

### Oklahoma, Liability for Financing Scams

No applicable provisions were located.

## Oregon

### Oregon, Liability for Financing Scams

[Mortgage Rescue Fraud Prevention Act](#) (§§ 646A.702, .705, .710, .715, .720, .725, .735, .745, .760, .765)

*Foreclosure Consultants*

Oregon law regulates any *foreclosure consultant*, defined as a person who "directly or through association with another makes a solicitation, representation or offer to a homeowner to perform, for or with the intent to receive compensation from or on behalf of the homeowner," a service that will accomplish one or more of the following:

- prevent, postpone or stop a foreclosure sale;
- obtain a forbearance from a beneficiary or mortgagee;
- assist the homeowner in exercising a right of redemption;
- obtain an extension of the period in which the homeowner may reinstate his obligation;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract and secured by or contained in a deed of trust for, or mortgage on, a residence in foreclosure or default;
- assist the homeowner in obtaining a loan or advance of funds; or
- avoid or ameliorate an impairment of the homeowner's credit resulting from recorded notice of foreclosure or default.

The law requires a foreclosure consulting contract to be in writing and subject to cancellation at any time by the homeowner.

A real estate licensee, if acting within the scope of that license, is not deemed a foreclosure consultant for purposes of the law. An agent or broker should, however, be aware of some of the activities prohibited by the law in which they could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services provided by a foreclosure consultant to a homeowner, unless the consideration is first fully disclosed in writing to the homeowner;
- directly or indirectly acquire an interest in a residence in foreclosure or default transferred by a homeowner with whom the foreclosure consultant has contracted, including any interest transferred to or through a member of the foreclosure consultant's family, or to or through a subsidiary, affiliate or related entity in which the foreclosure consultant's family is a primary member, shareholder or owner;
- receive compensation from a third party for facilitating or arranging for entry into an equity conveyance by a homeowner with whom the foreclosure consultant has contracted; or
- facilitate or arrange for entry into an equity conveyance by a homeowner with whom the foreclosure consultant has contracted, if the consultant knows that the equity purchaser has failed to comply with the law governing equity conveyances (see below).

### *Equity Conveyances*

Oregon statutes also regulate equity conveyances. An "equity conveyance" is a transaction that involves:

- the transfer of an interest in a residence in foreclosure (i.e., owner-occupied one to four single-family unit property against which a notice of default has been recorded) by an equity seller to an equity purchaser, or to another person acting in association with the equity purchaser, that allows the equity purchaser or other person to obtain legal or equitable title to all or part of the residential real property; and
- a subsequent conveyance, or agreement for a subsequent conveyance, of an interest in the residential real property from the equity purchaser or person acting in association with the equity purchaser to the equity seller to allow the equity seller to possess the property during, or after termination of, the foreclosure process.

The law requires that every equity conveyance be in writing and that the equity seller may cancel the contract within three business days. Prior to the equity seller's execution of the conveyance, the equity purchaser must verify and be able to demonstrate that the seller has or will have a reasonable ability to pay for the subsequent reconveyance back to the seller as provided by the contract or, if the contract provides for a lease with an option to repurchase, that the seller has a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that if a property is resold to a third-party bona fide purchaser within 24 months after the equity seller enters into an equity conveyance contract, the equity purchaser must pay the equity seller cash or consideration equal to at least 82 percent of the equity recapture payment (defined in statute) from the resale no later than 15 days after the receipt of payment from the third-party purchaser. Finally, the law also prohibits the equity purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

#### *Damages and penalties*

An equity seller may bring an action for damages incurred by the equity seller resulting from a violation of Or. Rev. Stat. §§ 646A.725 to 646A.750. If a court finds that a defendant violated the statutes knowingly, the court must award the equity seller three times the amount of the actual damages. The court may also award an equity seller reasonable attorney fees, costs, and expenses.

Effective July 1, 2011, a violation of Or. Rev. Stat. §§ 646A.702 to 646A.720 (regarding foreclosure consultants) or 646A.725 to 646A.750 (regarding equity conveyances) is a Class A misdemeanor.

#### Debt Management Services (§ 697.612)

Oregon laws require the registration of debt management service providers. Although an agent or broker would not be performing "debt management services" as defined in the statute, the law also provides that a person who has not registered with the Director of the Department of Consumer and Business Services under the statute may not engage in business in Oregon in the course of which the person receives, or expects to receive, money or other valuable consideration for:

- soliciting or receiving an application from a consumer for a debt management service;



- forwarding or providing a completed application for a debt management service to a debt management service provider;
- providing a consumer's name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service; or
- providing advice, assistance, instruction or instructional material concerning a debt management service to a consumer.

A real estate licensee is not among the persons and entities that are exempted from the above prohibition.

Statutory sections 646A.702, 646A.710, 646A.715, 646A.720, 646A.725, 646A.735, 646A.745, and 646A.760 enacted 2008; §§ 646A.705 and 646A.765 amended 2011; § 697.612 amended 2013.

[Or. Rev. Stat. §§ 646A.702, .705, .710, .715, .720, .725, .735, .745, .760, .765; 697.612 \(2015\)](#)

## Pennsylvania

### Pennsylvania, Liability for Financing Scams

No applicable provisions were located.

## Puerto Rico

### Puerto Rico, Liability for Financing Scams

No applicable provisions were located.

## Rhode Island

### Rhode Island, Liability for Financing Scams

Foreclosure Consultants and Reconveyances (§§ 5-79-1, -2, -3, -4; 5-80-1, -4, -8)

Rhode Island regulates any *foreclosure consultant*, defined as a person who directly or indirectly makes a solicitation, representation or offer to any owner to perform or performs for compensation any service which the person represents will in any manner accomplish any of the following:

- postpone or stop a foreclosure sale;
- obtain a forbearance from a beneficiary or mortgagee;
- assist the homeowner in exercising a right of redemption;
- obtain an extension of the period in which the homeowner may reinstate his obligation;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- assist the homeowner in foreclosure or default in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from recorded notice of default or the conduct of a foreclosure sale; or
- save the owner's residence from foreclosure.

The law requires licensure of foreclosure consultants and that a foreclosure consulting contract be in writing and subject to cancellation within three business days after execution by the homeowner.

A real estate licensee, when engaged in acts whose performance requires licensure under the real estate laws, is not deemed a foreclosure consultant. In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- directly or indirectly, or by means of a subsidiary or affiliate, acquire an interest in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.

The law also regulates *foreclosure reconveyances*. A “foreclosure reconveyance” is a transaction that involves:

- the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and
- a subsequent conveyance, or promise of a subsequent conveyance, of an interest in the property from the acquirer or person acting in participation with the acquirer back to the foreclosed homeowner that allows the homeowner to possess the real property following completion of the foreclosure proceeding, which interest includes but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

The law requires that every foreclosure reconveyance be in writing and that the homeowner may cancel the contract within five business days after execution of the agreement or by the last day of the period during which the homeowner has a right of redemption, whichever occurs first. The foreclosure purchaser must verify and be able to demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent reconveyance back to the foreclosed homeowner as provided by the contract or, if the contract provides for a lease with an option to repurchase, that the homeowner has a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the foreclosed homeowner, or make a payment to the homeowner such that the homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days of either the eviction or voluntary relinquishment of possession by

the homeowner. Among additional requirements, the law prohibits the foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

Note: A "foreclosure purchaser" is a person that has acted as an acquirer in more than four foreclosure reconveyances during any 24-month period or that has acted in joint venture or joint enterprise with one or more acquirers in more than four reconveyances during any 24-month period.

#### Third-Party Loan Servicers (§ 19-14.11-4)

Effective July 1, 2015, it is a violation of chapter 19-14.11 (regarding third-party loan servicers) for a person to act as follows, among other actions:

- engage in an unfair or deceptive practice toward any person;
- obtain property by fraud or misrepresentation;
- use any unfair or unconscionable means when servicing a loan;
- "knowingly or recklessly facilitate the illegal foreclosure of real property collateral"; and
- fail to comply with federal or state laws, rules, or other binding authorities related to evaluating loans for modification purposes or modifying loans.

Statutory sections 5-79-2, 5-79-3, 5-79-4, and 5-80-1 amended 2006; §§ 5-79-1, 5-80-4, and 5-80-8 amended 2009; § 19-14.11-4 enacted 2014.

[R.I. Gen. Laws §§ 5-79-1, -2, -3, -4; 5-80-1, -4, -8; 19-14.11-4 \(2015\)](#)

## South Carolina

### South Carolina, Liability for Financing Scams

No applicable provisions were located.

## South Dakota

### South Dakota, Liability for Financing Scams

No specifically applicable provisions were located. Generally, except as explicitly provided by S.D. Codified Laws § 37-34-3, "no person may engage in the business of debt adjusting." A violation is a Class 2 misdemeanor.

Statutory section amended 2005.

[S.D. Codified Laws § 37-34-2 \(2015\)](#)

## Tennessee

### Tennessee, Liability for Financing Scams

#### Foreclosure Rescue Services

Tennessee regulates the services provided by a foreclosure-rescue consultant, defined as "a person who directly or indirectly makes a solicitation, representation or other offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services." Real estate licensees are *not* among the persons or entities exempted from the law.

"Foreclosure-related rescue services" are any services related to or promising assistance in connection with:

- stopping, avoiding or delaying foreclosure proceedings concerning residential real property;  
or
- curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

Among other restrictions, contracts for foreclosure-related services must be in writing, subject to cancellation without penalty within three business days after signing and specify the exact nature and specific detail of each service provided, with the total amount of charges to be paid by the homeowner.

Statutory sections enacted 2009.

Tenn. Code Ann. §§ 47-18-5401, -5402 (LexisNexis 2016)

## Texas

### Texas, Liability for Financing Scams

#### Mortgage Fraud and General Provisions (§§ 32.32, .46)

No specifically applicable provisions were located. However, a person commits mortgage fraud if he or she "intentionally or knowingly makes a materially false or misleading written statement to *obtain property or credit*, including a mortgage loan." (Emphasis added.) Also, a person commits an offense if, with intent to defraud or harm a person, he or she, by deception "causes another to sign or execute any document affecting property or service or the pecuniary interest of any person." These offenses may be misdemeanors or felonies, depending on the property's value.

#### Residential Mortgage Loan Originators (§§ 157.024, .025, .027)

The commissioner may order disciplinary action against a licensed residential mortgage loan originator if the commissioner, after notice and opportunity for a hearing, has determined that the licensee while performing an act for which a license under chapter 157 (regarding mortgage bankers) or chapter 156 (residential mortgage loan companies and originators) is required, "engaged in conduct that constitutes improper, fraudulent, or dishonest dealings," among other things.

A residential mortgage loan applicant injured by a violation of chapter 157 or chapter 156 may bring an action to recover actual monetary damages, reasonable attorneys' fees, and court costs. The commissioner may order a residential mortgage loan originator to make restitution for any amount he or she received in violation of chapter 156 or chapter 157.

Statutory sections 157.024, 157.025, and 157.027 amended 2013; §§ 32.32 and 32.46 amended 2015.

[Tex. Penal Code §§ 32.32, .46; 157.024, .025, .027 \(2015\)](#)

## Utah

### Utah, Liability for Financing Scams

Mortgage Fraud (§§ 76-6-1202, -1203, -1204)

Any person commits mortgage fraud if, with the intent to defraud, he or she knowingly:

- makes a material misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, borrower or any other person or entity involved in the mortgage lending process;
- uses or facilitates the use of any material misrepresentation, misstatement or omission during the mortgage lending process with the intention that it will be relied on by a mortgage lender, borrower or any other person or entity involved in the mortgage lending process;
- receives any proceeds or any other funds in connection with a mortgage loan that the person knows resulted from a violation described herein; or
- files or causes to be filed with any Utah county recorder a document which contains a material misstatement, misrepresentation or omission.

A violation constitutes a misdemeanor, third-degree felony or second-degree felony, depending on the value of the property, money or things obtained or sought to be obtained by a violation. Each residential transaction offense constitutes a separate violation.

"Mortgage lending process" is the process through which a person seeks or obtains a mortgage loan, including solicitation, application or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

#### Unauthorized Exercise of Power of Sale (§ 57-1-23.5)

An unauthorized person who conducts an unauthorized sale is liable to the trustor for the greater of the actual damages suffered by the trustor or \$2000. The court must also award a prevailing plaintiff costs and attorneys' fees.

A trustee who is qualified pursuant to § 57-1-21 (1)(a)(i) or (iv) and who exercises a power of sale has "a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor."

#### Foreclosure Rescue (§§ 61-2f-102, -401)

Selling real estate as a part of a foreclosure rescue is included in the definition of "principal broker."

A real estate licensee may not:

- engage in a foreclosure rescue act without entering into a written agreement specifying what acts will be completed;
- induce a person who is at risk of foreclosure to hire the licensee to engage in a foreclosure rescue act by (a) suggesting that the licensee has a special relationship with the person's lender or loan servicer or (b) falsely representing or advertising that the licensee is acting on behalf of a government agency, the person's lender or loan servicer, or a nonprofit or charitable institution; or
- recommend or participate in a foreclosure rescue that requires a person (a) to transfer a real estate title to the licensee or to a related third-party, (b) to make a mortgage payment to a



person other than the person's loan servicer, or (c) to refrain from contacting the person's lender, loan servicer, attorney, credit counselor, or housing counselor.

"Foreclosure rescue" means to act as follows for compensation or valuable consideration:

- to engage, or offer to engage, in an act that "the person represents will assist a borrower in preventing a foreclosure" and that "relates to a transaction involving the transfer of title to residential real property"; or
- as an employee or agent of another, to solicit, or offer that the other person will engage in an act described above or to negotiate terms related to an act described above.

#### Loan Modification Assistance (§§ 61-2f-102, -401)

It is unlawful for a real estate licensee to engage in a loan modification assistance act that requires a mortgage officer license pursuant to chapter 2c, without being so licensed. In this context, "loan modification assistance" means, for compensation or other valuable consideration, to act as follows:

- to obtain a loan term of a residential mortgage loan that is different from an existing loan term or substitute a new residential mortgage loan for an existing residential mortgage loan; or
- as an employee or agent of another, to solicit, or offer that the other person will engage in such an act or negotiate terms related to such an act.

#### Residential Mortgage Practices and Licensing Act (§ 61-2c-102, -301)

Similar laws exist in the context of the state's Residential Mortgage Practices and Licensing Act (chapter 61-2c). A person transacting the business of residential mortgage loans may not:

- engage in an act of loan modification assistance without being licensed under chapter 61-2c;
- engage in an act of foreclosure rescue that requires a real estate license under chapter 61-2, without being licensed under that chapter; or
- as of May 10, 2016, act incompetently when transacting the business of residential mortgage loans such that the person fails to safeguard the public's interests or "conform to acceptable standards of the residential mortgage loan industry."

In this context, "business of residential mortgage loans" means to render, for compensation, services related to the origination of a residential mortgage loan, including, among other acts, engaging in loan modification assistance.

Statutory sections 76-6-1202 and 76-6-1203 enacted 2008; § 76-6-1204 amended 2010; § 57-1-23.5 enacted 2011; §§ 61-2c-102, 61-2c-301, 61-2f-102, and 61-2f-401 amended 2016.

[Utah Code §§ 57-1-23.5; 61-2f-102, -401; 61-2c-102, -301; 76-6-1202, -1203, -1204 \(2016\)](#)

## Vermont

### Vermont, Liability for Financing Scams

No generally applicable provisions were located.

Chapter 73 of title 8 (regarding licensed lenders) provides that it is a violation of the chapter for a person or individual to act as follows, among other prohibited acts:

- to employ a "scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person";
- to engage in an unfair or deceptive practice toward any person;

- to obtain property by fraud or misrepresentation;
- to solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available;
- to conduct any business covered by the chapter without holding a valid license; or
- to make a false or deceptive statement or representation or engage in bait and switch advertising.

The Commissioner of Financial Regulation may:

- impose an administrative penalty of no more than \$10,000.00 for each violation on any person who violates chapter 73; and
- order any person to make restitution for any violation of the chapter.

Statutory section 2215 amended 2009; § 2241 enacted 2009.

[Vt. Stat. tit. 8, §§ 2215, 2241 \(2015\)](#)

## Virgin Islands

### Virgin Islands, Liability for Financing Scams

No generally applicable provisions were located.

The Virgin Islands' S.A.F.E. Mortgage Licensing Act provides that it is a violation for a person or individual subject to the act to do the following, among other acts:

- employ a scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- engage in an unfair or deceptive practice;
- obtain property by fraud or misrepresentation;
- solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available;
- conduct a business covered by the act without holding a valid license; or
- make a false or deceptive statement or representation or engage in bait and switch advertising.

In order to enforce the act, the Banking Board may, among other things:

- order restitution;
- impose fines; or
- issue orders or directives providing for a cease and desist from conducting business, directing a person to cease any harmful activities or violations, or providing other affirmative actions the Banking Board deems necessary.

The Banking Board may also impose a civil penalty on a mortgage loan originator or person subject to the S.A.F.E. Mortgage Licensing Act, if the board finds that the person has violated or failed to comply with any requirement of the act. The maximum penalty for each violation or omission is \$1000.

Statutory sections enacted 2009.

V.I. Code tit. 9, §§ 388, 392 (LexisNexis 2016)

## Virginia

### Virginia, Liability for Financing Scams

#### Foreclosure Rescue (§ 59.1-200.1)

In a consumer transaction involving residential real property owed or occupied as the primary dwelling of the owner, a supplier of services to avoid or prevent foreclosure commits a fraudulent act or practice under the consumer protection act if the supplier:

- charges or receives a fee prior to the full performance of the services he or she has agreed to perform if the transaction does not involve the sale or transfer of residential real property, or prior to the settlement on a sale or transfer of residential real property if the transaction involves a sale or transfer;
- fails to make payments under the mortgage or deed of trust that is a lien on the residential property as the payments become due, where the supplier has agreed to do so, regardless of whether the purchaser is obligated on the loan, and applies rents received from such dwellings to his own use;
- represents to the seller of such property that the seller has the option to repurchase the property, after the supplier takes legal or equitable title, unless there is a written contract providing such repurchase option on terms and at a price stated in the contract; or
- advertises or offers such prohibited services.

#### Mortgage Broker-Real Estate Broker Relationships (§§ 6.2-1602, -1616, -1617)

While persons licensed as real estate brokers or salesmen, not actively and principally engaged in negotiating, placing or finding mortgage loans, when rendering services as a real estate broker or salesman, are exempt from licensing as mortgage brokers, any real estate salesman or broker who receives any fee, commission, kickback, rebate, or other payment for directly or indirectly negotiating, placing, or finding a mortgage loan for another is not exempt from regulation as a mortgage broker.

No mortgage broker required to be licensed may receive compensation for negotiating, placing or finding a mortgage loan if he or she, or a person affiliated with such broker, has otherwise acted as a real estate broker, agent or salesman in connection with the sale of the real estate which secures the mortgage loan and such broker or affiliated person has received or will receive any other compensation or thing of value from the lender, borrower, seller or any other person, unless the borrower is given the statutorily mandated written notice. Additionally, in such circumstances, the mortgage broker must have been regularly engaged in acting as a mortgage broker in Virginia as of February 25, 1989.

However, a real estate broker who is either an owner of an interest in a real estate firm, or acts as a real estate broker in a sole proprietorship, may have an ownership interest in a mortgage broker or mortgage lender and may receive returns on investment from such ownership interest or payment of compensation for services actually performed for such mortgage broker or lender.

Statutory section 59.1-200.1 amended 2009; §§ 6.2-1616 and 6.2-1617 renumbered and amended 2010; § 6.2-1602 amended 2012.

[Va. Code §§ 6.2-1602, -1616, -1617; 59.1-200.1 \(2016\)](#)

## Washington

### Washington, Liability for Financing Scams

Mortgage Fraud (§§ 19.144.080, .090)

As of July 24, 2015, a person commits mortgage fraud if, in connection with the mortgage lending process, the person directly or indirectly:

- employs any scheme, device or artifice to defraud or materially mislead any borrower during the lending process;
- defrauds or materially misleads any lender or any person, or engages in any unfair or deceptive practice toward any person related to the mortgage lending process;
- obtains property by fraud or material misrepresentation during the mortgage lending process;
- knowingly makes a misrepresentation, misstatement, or omission related to the mortgage lending process, knowing that it may be relied on by a mortgage lender, borrower or any other party related to the mortgage lending process;
- uses or facilitates the use of any misrepresentation, misstatement or omission related to the mortgage lending process, intending that it will be relied on by a mortgage lender, borrower, or any other party related to the mortgage lending process;
- receives proceeds or anything of value in connection with a residential mortgage closing that such person knew resulted from an above-described violation;
- files or causes to be filed with the county recorder or the registrar of deeds a document the person knows to contain a material misstatement, misrepresentation, or omission;
- violates Wash. Rev. Code § 31.04.297(3); or
- knowingly alters, destroys, shreds, mutilates, or conceals a record, document, or other object (or attempts to do so), intending to "impair the investigation and prosecution" of the crime.

Each crime prosecuted under § 19.144.080 is punished separately under chapter 9.94A, "unless it is the same criminal conduct as any other crime under RCW 9.94A.589." Also, if a person who, when committing mortgage fraud, commits another crime, the person may be:

- punished for that other crime in addition to mortgage fraud; and
- prosecuted separately for each crime.

Mortgage fraud is a serious level III offense. A person who knowingly violates the mortgage fraud statute or who knowingly aids or abets in any such violation is guilty of a class B felony. Also, a person who violates chapter 19.144 is subject to civil forfeiture statutes.

A person who violates § 19.144.080 or § 31.04.297(3) is also liable for civil damages equal to the greater of \$5000 or the actual damages, including:

- costs to repair the victim's credit record and quiet title on the residential property; and
- reasonable attorneys' fees.

After a conviction, a sentencing court may issue any necessary orders to correct a public record that contains false information resulting from the violation.

#### Distressed Home Consultants and Conveyances (§§ 61.34.020, .050, .060, .080, .100, .120)

Washington regulates any *distressed home consultant*, defined as a person who either systematically contacts property owners that court records or newspaper advertisements show are in foreclosure or in danger of foreclosure, or solicits or contacts a distressed homeowner in writing, in person or through electronic or telecommunications medium and makes a representation or offer to perform any service that the person represents will:

- postpone, stop, enjoin, delay, void, set aside, annul, or stay a foreclosure sale;



- obtain a forbearance from a mortgage servicer, beneficiary or mortgagee;
- assist the distressed homeowner in exercising a right of reinstatement or to refinance a loan that is in foreclosure or in danger of foreclosure;
- obtain an extension of the period in which the distressed homeowner may reinstate his obligation or extend the deadline to object to a ratification;
- obtain a waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;
- assist the distressed homeowner in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from the recording of a notice of trustee sale, the filing of a petition to foreclose, or the conduct of a foreclosure sale;
- save the distressed owner's residence from foreclosure;
- cause a contract to purchase an interest in the distressed home to be executed or closed within 20 days of a docketed or advertised foreclosure sale, unless the distressed homeowner is represented in the transaction by an attorney or real estate licensee;
- arrange for the distressed homeowner to have an option to repurchase the residence;
- arrange for the distressed homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence unless (a) the continued residence is not for more than 20 days after closing; (b) the purpose of the continued residence is to arrange for and relocate to a new residence; and (c) the distressed homeowner is represented by an attorney or real estate licensee; or

- engage in any documentation, grant, conveyance, sale, lease, trust or gift by which the distressed homeowner clogs his or her equity of redemption in the distressed residence.

The law requires licensure of distressed home consultants, who are then deemed to be in a fiduciary relationship with the distressed homeowner.

A real estate licensee is not deemed a distressed home consultant when rendering real estate brokerage services, regardless of whether the person renders additional services that would otherwise constitute distressed home consultant services, and if the person is not engaged in activities designed to, or represented to, result in a distressed home conveyance. In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- directly or indirectly, or by means of a related person, acquire an interest in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.

The law also regulates *distressed home conveyances*. A "distressed home conveyance" is a transaction in which:

- a distressed homeowner transfers an interest in the distressed home to a distressed home purchaser;
- the distressed home purchaser allows the distressed homeowner to occupy the distressed home; and
- the distressed home purchaser, or a person acting in participation with such purchaser, conveys or promises to convey the distressed home to the distressed homeowner, provides

the homeowner with an option to purchase the home at a later date or promises the homeowner an interest in or portion of the proceeds of any resale of the distressed home.

The law requires that every distressed home conveyance be in the form of written contract and that the homeowner may cancel any contract with a distressed home purchaser within five business days after execution or until the last day of the redemption period, whichever occurs first. The home purchaser must verify and be able to demonstrate that the distressed homeowner has a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner or, in the case of a lease with an option to repurchase, that the distressed homeowner has a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the distressed homeowner, or make a payment to the homeowner so that the homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property as of the date of eviction or voluntary relinquishment of possession of the distressed home by the distressed homeowner. Among additional requirements, the law prohibits the distressed home purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

#### Equity Skimming (§§ 61.34.020, .030)

Equity skimming occurs when:

- (a) the purchaser of a dwelling represents that he or she will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; (b) the person fails to make such payments as they become due, within two years subsequent to the purchase; and (c) the person diverts value from the dwelling by either (i) applying or authorizing the application of rents from the dwelling for the person's own benefit or use; (ii) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use; or (iii) removing or obtaining appliances, fixtures, furnishings or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

- (a) the person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or secured by a lien on other real or personal property, or without any security; (b) the person obtains a superior priority loan which either (i) is secured by a lien on the dwelling which is superior to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase; or (ii) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; (c) the person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and (d) the person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use.

Equity skimming is a level II offense, and any person who willfully engages in a pattern of equity skimming is guilty of a class B felony.

#### Mortgage Loan Modification (§§ 31.04.015, .027)

Washington's laws related to "mortgage loan originators," including licensing laws, also apply to individuals who for compensation or gain perform residential mortgage loan modification services or hold themselves out as being able to perform residential mortgage loan modification services. It is a violation for a licensee or other person subject to chapter 31.04 to:

- employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person; or
- engage in any unfair or deceptive practice toward any person, among other things.

Effective July 24, 2015, a "licensee" in this context includes a person, whether located within or outside of Washington, who fails to obtain the required license.

#### Unfair or Deceptive Acts (§ 61.24.135)

It is an unfair or deceptive act under Washington's consumer protection act (chapter 19.86) for a person "to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted pursuant to a power of sale in a deed of trust." The trustee may decline to complete a sale or deliver the trustee's deed and refund the purchase price, if the bidding appears to have been collusive or defective.

It is also an unfair or deceptive act and an unfair method of competition in violation of the consumer protection act, for a person or entity:

- to violate the duty of good faith under § 61.24.163 (regarding the state's foreclosure mediation program);
- to fail to comply with § 61.24.174 (regarding reporting and payment requirements related to property subject to notice of default), as it existed before July 1, 2016; or
- to fail to initiate contact with a borrower and exercise due diligence, as required by § 61.24.031 (regarding notice of default).

Statutory section 61.34.030 enacted 1988; §§ 61.34.050, 61.34.060, 61.34.080, 61.34.100, and 61.34.120 enacted 2008; § 61.34.020 amended 2009; §§ 19.144.080, 19.144.090, 31.04.015, and 31.24.027 amended 2015; § 61.24.135 amended 2016.

[Wash. Rev.](#)

[Code §§ 19.144.080, .090; 31.04.015, .027; 61.34.020, .030, .050, .060, .080, .100, .120; 61.24.135 \(2015\)](#) (as amended by [2016 Wash. Sess. Laws ch. 196](#))

## West Virginia

### West Virginia, Liability for Financing Scams

No specifically applicable provisions were located. However, subject to specified exemptions, it is a misdemeanor for a person to "solicit in any manner a debt pooling."

Also, a licensed residential mortgage lender may not, among other things:

- induce or permit a borrower to become obligated to the licensee under more than one subordinate mortgage loan at the same time in order to obtain greater charges than would otherwise be permitted under applicable law;
- "advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction"; or
- knowingly violate any provision of any other applicable state or federal law regulating primary or subordinate mortgage loans.

Statutory section 61-10-23 amended 1971; § 31-17-12 history unknown; § 31-17-8 amended 2016.

[W. Va. Code §§ 31-17-8](#) (as amended by [2016 W. Va. Acts ch. 157 \(S.B. 311\)](#)), [-12](#); [61-10-23 \(2016\)](#)

## Wisconsin

### Wisconsin, Liability for Financing Scams

#### Foreclosure Consultants and Reconveyances

Wisconsin regulates any *foreclosure consultant*, defined as a person who directly or indirectly makes a solicitation, representation or offer to any owner to perform or performs for compensation any service which the person represents will in any manner accomplish any of the following:

- postpone or stop a foreclosure sale;
- obtain a forbearance from a beneficiary or mortgagee;
- obtain the waiver of an acceleration clause that is contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;

- assist the homeowner in foreclosure or default in obtaining a loan or advance of funds;
- avoid or ameliorate an impairment of the homeowner's credit resulting from recorded liens or the conduct of a foreclosure sale; or
- save the residence in foreclosure from foreclosure.

The law requires licensure of foreclosure consultants and that a foreclosure consulting contract be in writing and subject to cancellation within three business days after execution by the homeowner.

A real estate licensee, when engaged in acts for which licensure is required under the real estate law, is not deemed a foreclosure consultant for purposes of the law, unless he or she "is engaged in offering services designed to, or purportedly designed to, enable the foreclosed homeowner to retain possession of the residence in foreclosure." In any event, an agent or broker should be aware of some of the activities prohibited by the law in which he or she could become enmeshed. A foreclosure consultant may not:

- receive consideration from a third party in connection with services rendered to a homeowner, unless the consideration is first fully disclosed to the homeowner; or
- directly or indirectly, or by means of a subsidiary or affiliate, acquire an interest in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.

The law also regulates *foreclosure reconveyances*. A "foreclosure reconveyance" is a transaction that involves:

- the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of an interest from the homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process; and

- a subsequent conveyance, or promise of a subsequent conveyance, of an interest from the acquirer or person acting in participation with the acquirer back to the foreclosed homeowner that allows the homeowner to possess the residence in foreclosure or other real property, which interest includes but is not limited to, an interest in a land contract, purchase agreement, option to purchase, or lease.

The law requires that every foreclosure reconveyance be in writing and that the homeowner may cancel the contract within five business days after execution of the agreement or until the last day of the redemption period, whichever occurs first. The foreclosure purchaser must verify and be able to demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent reconveyance back to the foreclosed homeowner as provided by the contract or, if the contract provides for a lease with an option to repurchase, that the homeowner has a reasonable ability to make the lease payments and repurchase the property within the option term.

The law also provides that a foreclosure purchaser must either ensure that title to the property is reconveyed to the foreclosed homeowner, or make a payment to the homeowner such that the homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days of either the eviction or voluntary relinquishment of possession of the dwelling by the homeowner. Among additional requirements, the law prohibits the foreclosure purchaser from making a number of specific types of statements or representations prior to or during the course of the transaction.

Statutory sections enacted 2009.

[Wis. Stat. §§ 846.40, .45 \(2016\)](#)

## Wyoming

### Wyoming, Liability for Financing Scams

No specifically applicable provisions were located. However, except in the practice of law, it is unlawful for a person to engage in the business of debt adjusting.

Statutory section enacted 1957.

Wyo. Stat. § 33-14-102 (LexisNexis 2016)