

REFERENCE TITLE:

# Mortgage Rescue Fraud Protection Act

State of Arizona Senate Forty-eighth Legislature First Regular Session 2007

## SB 1616

AN ACT amending title 44, Arizona Revised Statutes, by adding chapter 34; relating to home mortgage foreclosures.

Section 1. Title 44, Arizona Revised Statutes, is amended by adding chapter 34, to read:  
**CHAPTER 34 HOME MORTGAGE FORECLOSURES**

### ARTICLE 1. GENERAL PROVISIONS

#### 44-7701. Definitions

In this chapter, unless the context otherwise requires:

1. "Foreclosure consultant" means a person who directly or indirectly makes any solicitation, representation or offer to a homeowner facing foreclosure to perform, with or without compensation, or who performs, with or without compensation, any service that the person represents will do, any of the following:
  - (a) Prevent, postpone or reverse the effect of a foreclosure sale.
  - (b) Allow the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence.
  - (c) Allow the homeowner to have an option to purchase the homeowner's residence.
2. "Foreclosure reconveyance" means a transaction involving both of the following:
  - (a) The transfer of title to real property by a homeowner during or incident to a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party 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.
  - (b) The subsequent conveyance or promise of a subsequent conveyance of an interest back to the homeowner by the acquirer or a person acting in participation with the acquirer that allows the homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust or other contractual arrangement.
3. "Formal settlement" means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, that is conducted by a settlement agent who is not employed by or an affiliate of the foreclosure purchaser and during which the homeowner must be presented with a completed copy of the HUD-1 settlement form.

4. "Homeowner" means the person holding record title to residential real property as of the date on which an action to foreclose the mortgage or deed of trust is filed.

44-7702. Notice of foreclosure

A. In addition to any other required notice, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall send written notice of the action to the record owner of the property to be sold no later than two days after the action to foreclose is docketed, both by certified mail, postage prepaid, return receipt requested, and by first class mail.

B. The notice prescribed in subsection A shall state that an action to foreclose the mortgage or deed of trust may be or has been docketed and that a foreclosure sale of the property will be held. The notice shall contain the following statement printed in at least fourteen point bold-faced type.

Notice required by state law

Mortgage foreclosure is a complex process. Some people may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process.

44-7703. Rescission of foreclosure consulting and reconveyance contracts

A. In addition to any other right under law to cancel or rescind a contract, a homeowner has the right to rescind a foreclosure consulting contract at any time and to rescind a foreclosure reconveyance at any time before midnight of the tenth business day after any conveyance or transfer.

B. Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract or through any fax or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

C. Notice of rescission, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid. Notice of rescission need not be in any form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract or foreclosure reconveyance.

D. As part of the rescission of a foreclosure consulting contract or foreclosure reconveyance, the homeowner shall repay, within sixty days from the date of rescission, any monies paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract or foreclosure reconveyance, together with interest calculated at the rate of eight per cent per year.

44-7704. Limits on foreclosure consultants

A foreclosure consultant shall not do any of the following:

1. Demand or receive any compensation until after the foreclosure consultant has fully performed every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform.
2. Demand or receive any fee, interest or any other compensation for any reason that exceeds eight per cent per year of the amount of any loan that the foreclosure consultant makes to the homeowner.

3. Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.
4. Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner.
5. Acquire any interest, directly or indirectly, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.
6. Take any power of attorney from a homeowner for any purpose except to inspect documents as provided by law.

#### 44-7705. Limits on foreclosure reconveyance

A. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance with a homeowner unless both of the following occur:

1. The foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure conveyance or if the foreclosure conveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the terms of the option to repurchase.
2. The foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected.

B. A foreclosure purchaser shall either:

1. Ensure that title to the property has been reconveyed to the homeowner in a timely manner if the terms of a foreclosure reconveyance agreement require a reconveyance.
2. Make payment to the homeowner within ninety days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least eighty-two per cent of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within eighteen months after entering into a foreclosure reconveyance agreement.

**C. A foreclosure purchaser shall not:**

1. **Enter into repurchase or lease terms** as part of the foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct.
2. Represent, directly or indirectly, that:
  - (a) **The foreclosure purchaser is acting as an advisor or a consultant or in any other manner represents that the foreclosure purchaser is acting on behalf of the homeowner.**
  - (b) **The foreclosure purchaser is assisting the homeowner to save the house or use a substantially similar phrase.**
  - (c) The foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property.
3. Until the homeowner's right to rescind or cancel the transaction has expired, either:
  - (a) **Record any document, including an instrument of conveyance, signed by the homeowner.**

(b) Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.

D. For the purposes of this section, there is a rebuttable presumption that both:

1. A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt on a monthly basis, do not exceed sixty per cent of the homeowner's monthly gross income.

2. The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities and income.

E. The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within eighteen months after entering into a foreclosure reconveyance agreement on a form prescribed by the Attorney General.

44-7706. Enforcement; violations; classification

A. The Attorney General may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this chapter from engaging or continuing to engage in the violation. The court may enter any order or judgment necessary to:

1. Prevent the use by a person of any prohibited practice.

2. Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice.

3. Appoint a receiver in case of a wilful violation of this title.

B. In any action brought under this section, the attorney general is entitled to recover the costs of the action.

C. In addition to any action by the attorney general under this section and any other action authorized by law, a homeowner may bring an action for damages incurred as the result of a practice prohibited by this chapter. A homeowner who brings an action under this section and who is awarded damages may also seek, and the court may award, reasonable attorney fees. If the court finds that the defendant wilfully or knowingly violated this chapter, the court may award damages equal to three times the amount of actual damages.

D. A person who violates any provision of this chapter is guilty of a class 1 misdemeanor.

E. The attorney general shall maintain a list of nonprofit organizations that offer counseling or advice to homeowners who are in foreclosure or loan default and who are not directly or indirectly related to and do not contract for services with for profit lenders or foreclosure purchasers. The attorney general shall provide names and telephone numbers of organizations on the list to homeowners who contact the attorney general.

F. The attorney general shall adopt rules necessary to implement and administer compliance of this chapter.

Sec. 2. Short title

Title 44, chapter 34, Arizona Revised Statutes, as added by this act, may be cited as the "Mortgage Rescue Fraud Protection Act".

Sec. 3. Retroactivity

This act is effective retroactively to from and after June 30, 2007.