

By: Estes

S.B. No. 354

A BILL TO BE ENTITLED

AN ACT

relating to transactions involving residential mortgage foreclosures; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Business & Commerce Code, is amended by adding Chapter 21 to read as follows:

CHAPTER 21. HOMEOWNER PROTECTION FROM CERTAIN FORECLOSURE-RELATED TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. DEFINITIONS. In this chapter:

(1) "Equity purchase contract" means a contract between an equity purchaser and the homeowner of a residence in foreclosure.

(2) "Equity purchaser" means a person who, in the course of the person's business, vocation, or occupation, acquires title to a residence in foreclosure. The term does not include a person who acquires the title:

(A) for purposes of using the property as the person's residence for at least one year;

(B) by a deed in lieu of foreclosure to the holder of a voluntary lien or encumbrance of record;

(C) by a deed from the officer charged with selling property under Chapter 34, Tax Code;

(D) at a sale of real property authorized by

1 statute;

2 (E) by court order or judgment; or

3 (F) from the person's spouse or a relative of the  
4 person related by consanguinity or affinity.

5 (3) "Foreclosure consultant" means a person who  
6 performs, or represents that the person can or will perform, for  
7 compensation services in connection with the prevention or  
8 postponement of foreclosure proceedings against a homeowner's  
9 residential property or other services related to the foreclosure  
10 of the property.

11 (4) "Residence in foreclosure" means residential real  
12 property consisting of not more than four single-family dwelling  
13 units, at least one of which is occupied as the homeowner's  
14 principal place of residence, and against which a foreclosure  
15 action has been commenced.

16 Sec. 21.002. EXCEPTION FROM APPLICABILITY OF CERTAIN  
17 SUBCHAPTERS. (a) Except as provided by Subsection (b),  
18 Subchapters B and C do not apply to the following persons who  
19 perform foreclosure consulting services:

20 (1) an attorney admitted to practice in this state who  
21 performs those services in relation to the attorney's  
22 attorney-client relationship with a homeowner or the beneficiary of  
23 the lien being foreclosed;

24 (2) a person who holds or is owed an obligation secured  
25 by a lien on a residence in foreclosure if the person performs those  
26 services in connection with the obligation or lien;

27 (3) a person that regulates banks, trust companies,

1 savings and loan associations, credit unions, or insurance  
2 companies under the laws of this state or the United States if the  
3 person performs those services as part of the person's normal  
4 business activities;

5 (4) an affiliate of a person described by Subdivision  
6 (3) if the affiliate performs those services as part of the  
7 affiliate's normal business activities;

8 (5) a judgment creditor of the homeowner of the  
9 residence in foreclosure, if:

10 (A) the legal action giving rise to the judgment  
11 was commenced before the notice of default required under Section  
12 5.064 or 51.002(d), Property Code; and

13 (B) the judgment is recorded in the real property  
14 records of the clerk of the county where the residence in  
15 foreclosure is located;

16 (6) a licensed title insurer, title insurance agent,  
17 or escrow officer authorized to transact business in this state if  
18 the person is performing those services in conjunction with title  
19 insurance or settlement services;

20 (7) a licensed real estate broker or real estate  
21 salesperson if the person is engaging in an activity for which the  
22 person is licensed;

23 (8) a mortgage broker or loan officer licensed under  
24 Chapter 156, Finance Code, if the person is engaging in an activity  
25 for which the person is licensed; or

26 (9) a nonprofit organization that provides solely  
27 counseling or advice to homeowners who have a residence in

1 foreclosure or have defaulted on their home loans, unless the  
2 organization is an associate of the foreclosure consultant.

3 (b) Subchapters B and C apply to a person described by  
4 Subsection (a) if the person is providing foreclosure consulting  
5 services designed or intended to transfer title, directly or  
6 indirectly, to a residence in foreclosure to that person or the  
7 person's associate.

8 [Sections 21.003-21.050 reserved for expansion]

9 SUBCHAPTER B. CONTRACT FOR FORECLOSURE CONSULTING SERVICES

10 Sec. 21.051. FORM AND TERMS OF CONTRACT. (a) Each  
11 contract for the purchase of the services of a foreclosure  
12 consultant by a homeowner of a residence in foreclosure must be in  
13 writing, dated, and signed by each homeowner and the foreclosure  
14 consultant.

15 (b) In addition to the notice required by Section 21.052,  
16 the contract must:

17 (1) fully describe the services the foreclosure  
18 consultant is to perform for the homeowner; and

19 (2) contain the payment terms, including the total  
20 payments to be made to the foreclosure consultant or the  
21 foreclosure consultant's associate.

22 Sec. 21.052. REQUIRED DISCLOSURE. The contract must state  
23 the following, in at least 14-point boldfaced type, in immediate  
24 proximity to the space reserved for the homeowner's signature:

25 NOTICE REQUIRED BY TEXAS LAW

26 \_\_\_\_\_ (Name) or an associate of \_\_\_\_\_ (Name) cannot ask you to  
27 sign or have you sign any document that transfers any interest in

1 your home or property to \_\_\_\_\_ (Name) or \_\_\_\_\_ (Name's)  
2 associate.

3 \_\_\_\_\_ (Name) or \_\_\_\_\_ (Name's) associate cannot guarantee you  
4 that they will be able to refinance your home or arrange for you to  
5 keep your home.

6 This is an important legal contract and could result in the loss of  
7 your home. You should consider contacting an attorney or a housing  
8 counselor approved by the United States Department of Housing and  
9 Urban Development before signing.

10 [Sections 21.053-21.100 reserved for expansion]

11 SUBCHAPTER C. PROHIBITIONS AND RESTRICTIONS REGARDING FORECLOSURE

12 CONSULTING SERVICES

13 Sec. 21.101. NOTICE OF CHARGE OR RECEIPT OF CONSIDERATION.

14 A foreclosure consultant may not receive any consideration from a  
15 third party in connection with foreclosure consulting services  
16 provided to the homeowner of a residence in foreclosure unless the  
17 consideration is fully disclosed in writing to the homeowner.

18 Sec. 21.102. PROHIBITED CONDUCT. A foreclosure consultant  
19 may not:

20 (1) charge, collect, or receive interest or  
21 compensation for a loan made by the foreclosure consultant to the  
22 homeowner of a residence in foreclosure that exceeds eight percent  
23 a year; or

24 (2) acquire an interest, directly or indirectly, in  
25 the real or personal property of the homeowner of a residence in  
26 foreclosure with whom the foreclosure consultant has contracted to  
27 perform services.

1 [Sections 21.103-21.150 reserved for expansion]

2 SUBCHAPTER D. EQUITY PURCHASE CONTRACTS

3 Sec. 21.151. FORM AND TERMS OF CONTRACT. (a) Each equity  
4 purchase contract must be in writing, dated, and signed by each  
5 selling owner of the residence in foreclosure and the equity  
6 purchaser before the execution of any instrument quit-claiming,  
7 assigning, transferring, conveying, or encumbering an interest in  
8 the residence in foreclosure.

9 (b) In addition to the notice required by Section 21.152,  
10 the contract must contain:

11 (1) the name, business address, and telephone number  
12 of the equity purchaser;

13 (2) the total consideration to be paid by the equity  
14 purchaser in connection with or incident to the equity purchaser's  
15 acquisition, which in no event may be less than 82 percent of the  
16 property's fair market value;

17 (3) the payment terms or the terms of other  
18 consideration for services the equity purchaser represents will be  
19 performed for the selling homeowner before or after the sale; and

20 (4) the following notice:

21 "NOTICE REQUIRED BY TEXAS LAW

22 Until your right to cancel this contract has ended, \_\_\_\_\_  
23 (Name) or anyone working for \_\_\_\_\_ (Name) CANNOT ask you to  
24 sign or have you sign any deed or any other document."

25 Sec. 21.152. NOTICE OF CANCELLATION. (a) The contract  
26 must conspicuously state the following as the last provision before  
27 the space reserved for the selling homeowner's signature:

1 "You may cancel this contract for the sale of your house without any  
2 penalty or obligation at any time before \_\_\_\_\_ (Date and  
3 time of day). See the attached notice of cancellation form for an  
4 explanation of this right."

5 (b) The contract must have attached two easily detachable  
6 copies of a cancellation notice. The notice must be in the  
7 following form:

8 "NOTICE OF CANCELLATION

9 \_\_\_\_\_ (Date contract signed)

10 You may cancel this contract for the sale of your house, without any  
11 penalty or obligation, at any time before  
12 \_\_\_\_\_ (Date and time of day). To cancel this  
13 transaction, personally deliver a signed and dated copy of this  
14 Notice of Cancellation by United States mail, postage prepaid, to  
15 \_\_\_\_\_, (Name of purchaser) at  
16 \_\_\_\_\_ (Street address of purchaser's place of  
17 business) NOT LATER THAN \_\_\_\_\_ (Date and time of day).

18 I hereby cancel this transaction.

19 \_\_\_\_\_ (Date)

20 \_\_\_\_\_ (Seller's signature)"

21 [Sections 21.153-21.200 reserved for expansion]

22 SUBCHAPTER E. PROHIBITIONS AND RESTRICTIONS REGARDING EQUITY

23 PURCHASE CONTRACTS

24 Sec. 21.201. ACTIONS BEFORE CANCELLATION PERIOD EXPIRES.

25 An equity purchaser may not do any of the following before the  
26 period within which the homeowner may cancel the transaction has  
27 elapsed:

1           (1) accept from the homeowner an execution of, or  
2 induce the homeowner to execute, an instrument of conveyance of an  
3 interest in the residence in foreclosure;

4           (2) transfer or encumber or purport to transfer or  
5 encumber an interest in the residence in foreclosure to a third  
6 party; or

7           (3) pay any consideration to the homeowner.

8           Sec. 21.202. FALSE OR MISLEADING REPRESENTATION OR  
9 STATEMENT. (a) An equity purchaser may not make a false or  
10 misleading statement regarding the value of the residence in  
11 foreclosure or the amount of proceeds the homeowner will receive  
12 after a foreclosure sale.

13           (b) An equity purchaser may not represent, directly or  
14 indirectly, that the equity purchaser is assisting the foreclosed  
15 homeowner:

16           (1) to "save" the person's home or other words to that  
17 effect; or

18           (2) in preventing a completed foreclosure if the  
19 result of the transaction is that the foreclosed homeowner will not  
20 repurchase the property.

21           [Sections 21.203-21.250 reserved for expansion]

22                           SUBCHAPTER F. CIVIL REMEDIES

23           Sec. 21.251. DECEPTIVE TRADE PRACTICE. A violation of this  
24 chapter is a false, misleading, or deceptive act or practice  
25 actionable under Subchapter E, Chapter 17.

26           SECTION 2. The changes in law made by this Act apply to a  
27 contract entered into on or after the effective date of this Act. A



1 contract entered into before the effective date of this Act is  
2 governed by the law in effect on the date the contract was entered  
3 into, and the former law is continued in effect for that purpose.

4 SECTION 3. This Act takes effect September 1, 2009.