

REFERENCE TITLE: mortgage rescue fraud protection act

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

SB 1616

Introduced by
Senator Aboud; Representatives Gallardo: Lopez, Prezelski

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 34; RELATING
TO HOME MORTGAGE FORECLOSURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 44, Arizona Revised Statutes, is amended by adding
3 chapter 34, to read:

4 CHAPTER 34

5 HOME MORTGAGE FORECLOSURES

6 ARTICLE 1. GENERAL PROVISIONS

7 44-7701. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "FORECLOSURE CONSULTANT" MEANS A PERSON WHO DIRECTLY OR INDIRECTLY
10 MAKES ANY SOLICITATION, REPRESENTATION OR OFFER TO A HOMEOWNER FACING
11 FORECLOSURE TO PERFORM, WITH OR WITHOUT COMPENSATION, OR WHO PERFORMS, WITH
12 OR WITHOUT COMPENSATION, ANY SERVICE THAT THE PERSON REPRESENTS WILL DO, ANY
13 OF THE FOLLOWING:

14 (a) PREVENT, POSTPONE OR REVERSE THE EFFECT OF A FORECLOSURE SALE.

15 (b) ALLOW THE HOMEOWNER TO BECOME A LESSEE OR RENTER ENTITLED TO
16 CONTINUE TO RESIDE IN THE HOMEOWNER'S RESIDENCE.

17 (c) ALLOW THE HOMEOWNER TO HAVE AN OPTION TO PURCHASE THE HOMEOWNER'S
18 RESIDENCE.

19 2. "FORECLOSURE RECONVEYANCE" MEANS A TRANSACTION INVOLVING BOTH OF
20 THE FOLLOWING:

21 (a) THE TRANSFER OF TITLE TO REAL PROPERTY BY A HOMEOWNER DURING OR
22 INCIDENT TO A PROPOSED FORECLOSURE PROCEEDING, EITHER BY TRANSFER OF INTEREST
23 FROM THE HOMEOWNER TO ANOTHER PARTY OR BY CREATION OF A MORTGAGE, TRUST OR
24 OTHER LIEN OR ENCUMBRANCE DURING THE FORECLOSURE PROCESS THAT ALLOWS THE
25 ACQUIRER TO OBTAIN LEGAL OR EQUITABLE TITLE TO ALL OR PART OF THE PROPERTY.

26 (b) THE SUBSEQUENT CONVEYANCE OR PROMISE OF A SUBSEQUENT CONVEYANCE OF
27 AN INTEREST BACK TO THE HOMEOWNER BY THE ACQUIRER OR A PERSON ACTING IN
28 PARTICIPATION WITH THE ACQUIRER THAT ALLOWS THE HOMEOWNER TO POSSESS THE REAL
29 PROPERTY FOLLOWING THE COMPLETION OF THE FORECLOSURE PROCEEDING, INCLUDING AN
30 INTEREST IN A CONTRACT FOR DEED, PURCHASE AGREEMENT, LAND INSTALLMENT SALE,
31 CONTRACT FOR SALE, OPTION TO PURCHASE, LEASE, TRUST OR OTHER CONTRACTUAL
32 ARRANGEMENT.

33 3. "FORMAL SETTLEMENT" MEANS AN IN-PERSON, FACE-TO-FACE MEETING WITH
34 THE HOMEOWNER TO COMPLETE FINAL DOCUMENTS INCIDENT TO THE SALE OR TRANSFER OF
35 REAL PROPERTY, OR THE CREATION OF A MORTGAGE OR EQUITABLE INTEREST IN REAL
36 PROPERTY, THAT IS CONDUCTED BY A SETTLEMENT AGENT WHO IS NOT EMPLOYED BY OR
37 AN AFFILIATE OF THE FORECLOSURE PURCHASER AND DURING WHICH THE HOMEOWNER MUST
38 BE PRESENTED WITH A COMPLETED COPY OF THE HUD-1 SETTLEMENT FORM.

39 4. "HOMEOWNER" MEANS THE PERSON HOLDING RECORD TITLE TO RESIDENTIAL
40 REAL PROPERTY AS OF THE DATE ON WHICH AN ACTION TO FORECLOSE THE MORTGAGE OR
41 DEED OF TRUST IS FILED.

42 44-7702. Notice of foreclosure

43 A. IN ADDITION TO ANY OTHER REQUIRED NOTICE, THE PERSON AUTHORIZED TO
44 MAKE A SALE IN AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST SHALL SEND
45 WRITTEN NOTICE OF THE ACTION TO THE RECORD OWNER OF THE PROPERTY TO BE SOLD

1 NO LATER THAN TWO DAYS AFTER THE ACTION TO FORECLOSE IS DOCKETED, BOTH BY
2 CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, AND BY FIRST CLASS
3 MAIL.

4 B. THE NOTICE PRESCRIBED IN SUBSECTION A SHALL STATE THAT AN ACTION TO
5 FORECLOSE THE MORTGAGE OR DEED OF TRUST MAY BE OR HAS BEEN DOCKETED AND THAT
6 A FORECLOSURE SALE OF THE PROPERTY WILL BE HELD. THE NOTICE SHALL CONTAIN
7 THE FOLLOWING STATEMENT PRINTED IN AT LEAST FOURTEEN POINT BOLD-FACED TYPE.

8 NOTICE REQUIRED BY STATE LAW

9 MORTGAGE FORECLOSURE IS A COMPLEX PROCESS. SOME PEOPLE MAY
10 APPROACH YOU ABOUT "SAVING" YOUR HOME. YOU SHOULD BE CAREFUL
11 ABOUT ANY SUCH PROMISES. THERE ARE GOVERNMENT AGENCIES AND
12 NONPROFIT ORGANIZATIONS YOU MAY CONTACT FOR HELPFUL INFORMATION
13 ABOUT THE FORECLOSURE PROCESS.

14 44-7703. Rescission of foreclosure consulting and reconveyance
15 contracts

16 A. IN ADDITION TO ANY OTHER RIGHT UNDER LAW TO CANCEL OR RESCIND A
17 CONTRACT, A HOMEOWNER HAS THE RIGHT TO RESCIND A FORECLOSURE CONSULTING
18 CONTRACT AT ANY TIME AND TO RESCIND A FORECLOSURE RECONVEYANCE AT ANY TIME
19 BEFORE MIDNIGHT OF THE TENTH BUSINESS DAY AFTER ANY CONVEYANCE OR TRANSFER.

20 B. RESCISSION OCCURS WHEN THE HOMEOWNER GIVES WRITTEN NOTICE OF
21 RESCISSION TO THE FORECLOSURE CONSULTANT AT THE ADDRESS SPECIFIED IN THE
22 CONTRACT OR THROUGH ANY FAX OR ELECTRONIC MAIL ADDRESS IDENTIFIED IN THE
23 CONTRACT OR OTHER MATERIALS PROVIDED TO THE HOMEOWNER BY THE FORECLOSURE
24 CONSULTANT.

25 C. NOTICE OF RESCISSION, IF GIVEN BY MAIL, IS EFFECTIVE WHEN DEPOSITED
26 IN THE UNITED STATES MAIL, PROPERLY ADDRESSED, WITH POSTAGE PREPAID. NOTICE
27 OF RESCISSION NEED NOT BE IN ANY FORM PROVIDED WITH THE CONTRACT AND IS
28 EFFECTIVE, HOWEVER EXPRESSED, IF IT INDICATES THE INTENTION OF THE HOMEOWNER
29 TO RESCIND THE FORECLOSURE CONSULTING CONTRACT OR FORECLOSURE RECONVEYANCE.

30 D. AS PART OF THE RESCISSION OF A FORECLOSURE CONSULTING CONTRACT OR
31 FORECLOSURE RECONVEYANCE, THE HOMEOWNER SHALL REPAY, WITHIN SIXTY DAYS FROM
32 THE DATE OF RESCISSION, ANY MONIES PAID OR ADVANCED BY THE FORECLOSURE
33 CONSULTANT OR ANYONE WORKING WITH THE FORECLOSURE CONSULTANT UNDER THE TERMS
34 OF THE FORECLOSURE CONSULTING CONTRACT OR FORECLOSURE RECONVEYANCE, TOGETHER
35 WITH INTEREST CALCULATED AT THE RATE OF EIGHT PER CENT PER YEAR.

36 44-7704. Limits on foreclosure consultants

37 A FORECLOSURE CONSULTANT SHALL NOT DO ANY OF THE FOLLOWING:

38 1. DEMAND OR RECEIVE ANY COMPENSATION UNTIL AFTER THE FORECLOSURE
39 CONSULTANT HAS FULLY PERFORMED EVERY SERVICE THE FORECLOSURE CONSULTANT
40 CONTRACTED TO PERFORM OR REPRESENTED THAT THE FORECLOSURE CONSULTANT WOULD
41 PERFORM.

42 2. DEMAND OR RECEIVE ANY FEE, INTEREST OR ANY OTHER COMPENSATION FOR
43 ANY REASON THAT EXCEEDS EIGHT PER CENT PER YEAR OF THE AMOUNT OF ANY LOAN
44 THAT THE FORECLOSURE CONSULTANT MAKES TO THE HOMEOWNER.

1 3. TAKE ANY WAGE ASSIGNMENT, ANY LIEN OF ANY TYPE ON REAL OR PERSONAL
2 PROPERTY, OR OTHER SECURITY TO SECURE THE PAYMENT OF COMPENSATION.

3 4. RECEIVE ANY CONSIDERATION FROM ANY THIRD PARTY IN CONNECTION WITH
4 FORECLOSURE CONSULTING SERVICES PROVIDED TO A HOMEOWNER UNLESS THE
5 CONSIDERATION IS FIRST FULLY DISCLOSED IN WRITING TO THE HOMEOWNER.

6 5. ACQUIRE ANY INTEREST, DIRECTLY OR INDIRECTLY, IN A RESIDENCE IN
7 FORECLOSURE FROM A HOMEOWNER WITH WHOM THE FORECLOSURE CONSULTANT HAS
8 CONTRACTED.

9 6. TAKE ANY POWER OF ATTORNEY FROM A HOMEOWNER FOR ANY PURPOSE EXCEPT
10 TO INSPECT DOCUMENTS AS PROVIDED BY LAW.

11 44-7705. Limits on foreclosure reconveyance

12 A. A FORECLOSURE PURCHASER MAY NOT ENTER INTO OR ATTEMPT TO ENTER INTO
13 A FORECLOSURE RECONVEYANCE WITH A HOMEOWNER UNLESS BOTH OF THE FOLLOWING
14 OCCUR:

15 1. THE FORECLOSURE PURCHASER VERIFIES AND CAN DEMONSTRATE THAT THE
16 HOMEOWNER HAS OR WILL HAVE A REASONABLE ABILITY TO PAY FOR THE SUBSEQUENT
17 RECONVEYANCE OF THE PROPERTY BACK TO THE HOMEOWNER ON COMPLETION OF THE TERMS
18 OF A FORECLOSURE CONVEYANCE OR IF THE FORECLOSURE CONVEYANCE PROVIDES FOR A
19 LEASE WITH AN OPTION TO REPURCHASE THE PROPERTY, THE HOMEOWNER HAS OR WILL
20 HAVE A REASONABLE ABILITY TO MAKE THE LEASE PAYMENTS AND REPURCHASE THE
21 PROPERTY WITHIN THE TERMS OF THE OPTION TO REPURCHASE.

22 2. THE FORECLOSURE PURCHASER AND THE HOMEOWNER COMPLETE A FORMAL
23 SETTLEMENT BEFORE ANY TRANSFER OF AN INTEREST IN THE PROPERTY IS EFFECTED.

24 B. A FORECLOSURE PURCHASER SHALL EITHER:

25 1. ENSURE THAT TITLE TO THE PROPERTY HAS BEEN RECONVEYED TO THE
26 HOMEOWNER IN A TIMELY MANNER IF THE TERMS OF A FORECLOSURE RECONVEYANCE
27 AGREEMENT REQUIRE A RECONVEYANCE.

28 2. MAKE PAYMENT TO THE HOMEOWNER WITHIN NINETY DAYS OF ANY RESALE OF
29 THE PROPERTY SO THAT THE HOMEOWNER RECEIVES CASH PAYMENTS OR CONSIDERATION IN
30 AN AMOUNT EQUAL TO AT LEAST EIGHTY-TWO PER CENT OF THE NET PROCEEDS FROM ANY
31 RESALE OF THE PROPERTY SHOULD A PROPERTY SUBJECT TO A FORECLOSURE
32 RECONVEYANCE BE SOLD WITHIN EIGHTEEN MONTHS AFTER ENTERING INTO A FORECLOSURE
33 RECONVEYANCE AGREEMENT.

34 C. A FORECLOSURE PURCHASER SHALL NOT:

35 1. ENTER INTO REPURCHASE OR LEASE TERMS AS PART OF THE FORECLOSURE
36 RECONVEYANCE THAT ARE UNFAIR OR COMMERCIALY UNREASONABLE OR ENGAGE IN ANY
37 OTHER UNFAIR CONDUCT.

38 2. REPRESENT, DIRECTLY OR INDIRECTLY, THAT:

39 (a) THE FORECLOSURE PURCHASER IS ACTING AS AN ADVISOR OR A CONSULTANT
40 OR IN ANY OTHER MANNER REPRESENTS THAT THE FORECLOSURE PURCHASER IS ACTING ON
41 BEHALF OF THE HOMEOWNER.

42 (b) THE FORECLOSURE PURCHASER IS ASSISTING THE HOMEOWNER TO SAVE THE
43 HOUSE OR USE A SUBSTANTIALLY SIMILAR PHRASE.

1 (c) THE FORECLOSURE PURCHASER IS ASSISTING THE HOMEOWNER IN PREVENTING
2 A FORECLOSURE IF THE RESULT OF THE TRANSACTION IS THAT THE HOMEOWNER WILL NOT
3 COMPLETE A REDEMPTION OF THE PROPERTY.

4 3. UNTIL THE HOMEOWNER'S RIGHT TO RESCIND OR CANCEL THE TRANSACTION
5 HAS EXPIRED, EITHER:

6 (a) RECORD ANY DOCUMENT, INCLUDING AN INSTRUMENT OF CONVEYANCE, SIGNED
7 BY THE HOMEOWNER.

8 (b) TRANSFER OR ENCUMBER OR PURPORT TO TRANSFER OR ENCUMBER ANY
9 INTEREST IN THE RESIDENCE IN FORECLOSURE TO ANY THIRD PARTY.

10 D. FOR THE PURPOSES OF THIS SECTION, THERE IS A REBUTTABLE PRESUMPTION
11 THAT BOTH:

12 1. A HOMEOWNER HAS A REASONABLE ABILITY TO PAY FOR A SUBSEQUENT
13 RECONVEYANCE OF THE PROPERTY IF THE HOMEOWNER'S PAYMENTS FOR PRIMARY HOUSING
14 EXPENSES AND REGULAR PRINCIPAL AND INTEREST PAYMENTS ON OTHER PERSONAL DEBT
15 ON A MONTHLY BASIS, DO NOT EXCEED SIXTY PER CENT OF THE HOMEOWNER'S MONTHLY
16 GROSS INCOME.

17 2. THE FORECLOSURE PURCHASER HAS NOT VERIFIED REASONABLE PAYMENT
18 ABILITY IF THE FORECLOSURE PURCHASER HAS NOT OBTAINED DOCUMENTS OTHER THAN A
19 STATEMENT BY THE HOMEOWNER OF ASSETS, LIABILITIES AND INCOME.

20 E. THE FORECLOSURE PURCHASER SHALL MAKE A DETAILED ACCOUNTING OF THE
21 BASIS FOR THE AMOUNT OF A PAYMENT MADE TO THE HOMEOWNER OF A PROPERTY RESOLD
22 WITHIN EIGHTEEN MONTHS AFTER ENTERING INTO A FORECLOSURE RECONVEYANCE
23 AGREEMENT ON A FORM PRESCRIBED BY THE ATTORNEY GENERAL.

24 44-7706. Enforcement; violations; classification

25 A. THE ATTORNEY GENERAL MAY SEEK AN INJUNCTION TO PROHIBIT A PERSON
26 WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS CHAPTER FROM ENGAGING
27 OR CONTINUING TO ENGAGE IN THE VIOLATION. THE COURT MAY ENTER ANY ORDER OR
28 JUDGMENT NECESSARY TO:

29 1. PREVENT THE USE BY A PERSON OF ANY PROHIBITED PRACTICE.

30 2. RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL PROPERTY ACQUIRED
31 FROM THE PERSON BY MEANS OF ANY PROHIBITED PRACTICE.

32 3. APPOINT A RECEIVER IN CASE OF A WILFUL VIOLATION OF THIS TITLE.

33 B. IN ANY ACTION BROUGHT UNDER THIS SECTION, THE ATTORNEY GENERAL IS
34 ENTITLED TO RECOVER THE COSTS OF THE ACTION.

35 C. IN ADDITION TO ANY ACTION BY THE ATTORNEY GENERAL UNDER THIS
36 SECTION AND ANY OTHER ACTION AUTHORIZED BY LAW, A HOMEOWNER MAY BRING AN
37 ACTION FOR DAMAGES INCURRED AS THE RESULT OF A PRACTICE PROHIBITED BY THIS
38 CHAPTER. A HOMEOWNER WHO BRINGS AN ACTION UNDER THIS SECTION AND WHO IS
39 AWARDED DAMAGES MAY ALSO SEEK, AND THE COURT MAY AWARD, REASONABLE ATTORNEY
40 FEES. IF THE COURT FINDS THAT THE DEFENDANT WILFULLY OR KNOWINGLY VIOLATED
41 THIS CHAPTER, THE COURT MAY AWARD DAMAGES EQUAL TO THREE TIMES THE AMOUNT OF
42 ACTUAL DAMAGES.

43 D. A PERSON WHO VIOLATES ANY PROVISION OF THIS CHAPTER IS GUILTY OF A
44 CLASS 1 MISDEMEANOR.

1 E. THE ATTORNEY GENERAL SHALL MAINTAIN A LIST OF NONPROFIT
2 ORGANIZATIONS THAT OFFER COUNSELING OR ADVICE TO HOMEOWNERS WHO ARE IN
3 FORECLOSURE OR LOAN DEFAULT AND WHO ARE NOT DIRECTLY OR INDIRECTLY RELATED TO
4 AND DO NOT CONTRACT FOR SERVICES WITH FOR PROFIT LENDERS OR FORECLOSURE
5 PURCHASERS. THE ATTORNEY GENERAL SHALL PROVIDE NAMES AND TELEPHONE NUMBERS
6 OF ORGANIZATIONS ON THE LIST TO HOMEOWNERS WHO CONTACT THE ATTORNEY GENERAL.

7 F. THE ATTORNEY GENERAL SHALL ADOPT RULES NECESSARY TO IMPLEMENT AND
8 ADMINISTER COMPLIANCE OF THIS CHAPTER.

9 Sec. 2. Short title

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

12 Sec. 3. Retroactivity

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