

# STATE OF NEW YORK

1688

2019-2020 Regular Sessions

## IN SENATE

January 15, 2019

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, the civil practice law and rules, and the criminal procedure law, in relation to distressed home loans

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (c) and (e) of subdivision 2 of section 265-a of  
2 the real property law, as added by chapter 308 of the laws of 2006, are  
3 amended to read as follows:

4 (c) "Covered contract" means any contract, agreement, or arrangement,  
5 or any term thereof, between an equity purchaser and equity seller  
6 which:

7 (i) is incident to the sale of a residence in foreclosure; or

8 (ii) is incident to the sale of a residence in foreclosure or default  
9 where such contract, agreement or arrangement includes a reconveyance  
10 arrangement[-]; or

11 (iii) is incident to the sale of a residence that is the collateral  
12 for a "distressed home loan" as defined in paragraph (d) of subdivision  
13 one of section two hundred sixty-five-b of this article.

14 For purposes of this section, any reference to the "sale" of a resi-  
15 dence by an equity seller to an equity purchaser shall include a trans-  
16 action where an equity seller receives consideration from the equity  
17 purchaser, and a transaction involving a transfer of title to the equity  
18 purchaser where no consideration is provided to the equity seller.

19 (e) "Equity purchaser" means any person who or entity which acquires  
20 title to any residence in foreclosure or, where applicable, default, or  
21 [~~his or her~~] the representative of such person or entity as defined in  
22 this subdivision, except a person who acquires such title as follows:

23 (i) to use, and who uses, such property as his or her primary resi-  
24 dence;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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- 1 (ii) by a deed from a referee in a foreclosure sale conducted pursuant  
2 to article thirteen of the real property actions and proceedings law;  
3 (iii) at any sale of property authorized by statute;  
4 (iv) by order or judgment of any court;  
5 (v) from a spouse, or from a parent, grandparent, child, grandchild or  
6 sibling of such person or such person's spouse;  
7 (vi) as a not-for-profit housing organization or as a public housing  
8 agency; or  
9 (vii) a bona fide purchaser or encumbrancer for value.

10 § 2. Paragraph (a) of subdivision 5 of section 265-a of the real prop-  
11 erty law, as added by chapter 308 of the laws of 2006, is amended to  
12 read as follows:

13 (a) In addition to the right of rescission described in subdivision  
14 eight of this section, the equity seller has the right to cancel any  
15 covered contract with an equity purchaser until midnight of the [~~fifth~~  
16 fourteenth] business day following the day on which the equity seller and  
17 equity purchaser sign a covered contract that complies with this  
18 section.

19 § 3. Paragraphs (a) and (d) of subdivision 7 of section 265-a of the  
20 real property law, as added by chapter 308 of the laws of 2006, are  
21 amended to read as follows:

22 (a) Before midnight of the [~~fifth~~] fourteenth business day after the  
23 date on which the covered contract is executed, the equity purchaser  
24 shall not do any of the following:

- 25 (i) accept from any equity seller an execution of, or induce any equi-  
26 ty seller to execute, any instrument of conveyance of any interest in  
27 the residence in foreclosure or, where applicable, default;  
28 (ii) record with the county clerk any document, including, but not  
29 limited to, any instrument of conveyance, signed by the equity seller;  
30 (iii) transfer or encumber or purport to transfer or encumber any  
31 interest in the residence in foreclosure or, where applicable, default  
32 to any third party;  
33 (iv) pay the equity seller any consideration; or  
34 (v) suggest, encourage, or provide any form which allows the equity  
35 seller to waive his or her right to cancel or rescind under this  
36 section.

37 (d) It is unlawful for any equity purchaser to initiate, enter into,  
38 negotiate, or consummate any covered contract involving residential real  
39 property in foreclosure or, where applicable, default if such [~~person~~  
40 equity purchaser], by the terms of such covered contract, takes [~~uncon-~~  
41 scionable] undue advantage of the equity seller.

42 § 4. Paragraph (e) of subdivision 1 of section 265-b of the real prop-  
43 erty law, as added by chapter 472 of the laws of 2008, subparagraphs (i)  
44 and (vii) as amended by chapter 507 of the laws of 2009, subparagraphs  
45 (iii) and (ix) as further amended by section 104 of part A of chapter 62  
46 of the laws of 2011, is amended to read as follows:

47 (e) "Distressed property consultant" or "consultant" means an individ-  
48 ual or a corporation, partnership, limited liability company or other  
49 business entity that, directly or indirectly, solicits or undertakes  
50 employment to provide consulting services to a homeowner for compen-  
51 sation or promise of compensation with respect to a distressed home loan  
52 or a potential loss of the home for nonpayment of taxes. A distressed  
53 property consultant does not include the following:

- 54 (i) an attorney admitted to practice in the state of New York when the  
55 attorney is directly providing [~~consulting services~~] legal represen-  
56 tation to a homeowner pursuant to a retainer agreement, and has entered

1 an appearance on behalf of a homeowner, in the course of his or her  
2 regular legal practice. This exception shall not apply to non-attorney  
3 individuals engaged in activities covered by subdivision two of this  
4 section who are employed by, associated with, or consultants for law  
5 firms when such law firms are not providing legal representation to a  
6 homeowner in a foreclosure action pursuant to a retainer agreement;

7 (ii) a person or entity who holds or is owed an obligation secured by  
8 a lien on any property in foreclosure while the person or entity  
9 performs services in connection with the obligation or lien;

10 (iii) a bank, trust company, private banker, bank holding company,  
11 savings bank, savings and loan association, thrift holding company,  
12 credit union or insurance company organized under the laws of this  
13 state, another state or the United States, or a subsidiary or affiliate  
14 of such entity or a foreign banking corporation licensed by the super-  
15 intendent of financial services or the comptroller of the currency;

16 (iv) a federal Department of Housing and Urban Development approved  
17 mortgagee and any subsidiary or affiliate of such mortgagee, and any  
18 agent or employee of these persons while engaged in the business of such  
19 mortgagee;

20 (v) a judgment creditor of the homeowner, if the judgment creditor's  
21 claim accrued before the written notice of foreclosure sale is sent;

22 (vi) a title insurer authorized to do business in this state, while  
23 performing title insurance and settlement services;

24 (vii) a person licensed as a mortgage banker or registered as a mort-  
25 gage broker or registered as a mortgage loan servicer as defined in  
26 article twelve-D of the banking law, provided that no such person shall  
27 take any upfront fee in conjunction with activities constituting the  
28 business of a distressed property consultant;

29 (viii) a bona fide not-for-profit organization that offers counseling  
30 or advice to homeowners in foreclosure or loan default; or

31 (ix) a person licensed or registered in the state to engage in the  
32 practice of other professions that the superintendent of financial  
33 services has determined should not be subject to this section.

34 § 5. Paragraphs (d) and (e) of subdivision 2 of section 265-b of the  
35 real property law, as added by chapter 472 of the laws of 2008, are  
36 amended and nine new paragraphs (f), (g), (h), (i), (j), (k), (l), (m)  
37 and a closing paragraph are added to read as follows:

38 (d) retaining any original loan document or other original document  
39 related to the distressed home loan, the property or the potential loss  
40 of the home for nonpayment of taxes; ~~[e]~~

41 (e) inducing or attempting to induce a homeowner to enter a consulting  
42 contract that does not fully comply with the provisions of this arti-  
43 cle~~[r]~~;

44 (f) inducing the transfer of a deed to any person or entity, including  
45 to the distressed property consultant;

46 (g) accepting or taking ownership of a deed from a homeowner for any  
47 period of time whatsoever;

48 (h) simulating in any manner a law enforcement officer, or a represen-  
49 tative of any governmental agency;

50 (i) disclosing or threatening to disclose information affecting the  
51 homeowner's reputation for credit worthiness with knowledge or reason to  
52 know that the information is false;

53 (j) communicating with the homeowner or any member of his family or  
54 household with such frequency or at such unusual hours or in such a  
55 manner as can reasonably be expected to abuse or harass the homeowner;

1 (k) claiming, attempting, or threatening to enforce a right with know-  
2 ledge or reason to know that the right does not exist;

3 (l) using a communication which simulates in any manner legal or judi-  
4 cial process or which gives the appearance of being authorized, issued  
5 or approved by a government, governmental agency, or attorney at law  
6 when it is not; or

7 (m) encumbering the property with a lien without any contractual or  
8 legal basis.

9 If any provision of this subdivision or the application thereof to any  
10 person or circumstances is held invalid, the invalidity thereof shall  
11 not affect other provisions or applications of this subdivision which  
12 can be given effect without the invalid provision or application, and to  
13 this end the provisions of this subdivision are severable.

14 § 6. The opening paragraph of subdivision (b) of rule 6312 of the  
15 civil practice law and rules, as amended by chapter 24 of the laws of  
16 1996, is amended to read as follows:

17 Except as provided in section 2512 and in actions brought under  
18 section two hundred sixty-five-a of the real property law, prior to the  
19 granting of a preliminary injunction, the plaintiff shall give an under-  
20 taking in an amount to be fixed by the court, that the plaintiff, if it  
21 is finally determined that he or she was not entitled to an injunction,  
22 will pay to the defendant all damages and costs which may be sustained  
23 by reason of the injunction, including:

24 § 7. The criminal procedure law is amended by adding a new section  
25 420.45 to read as follows:

26 § 420.45 Post-trial motion relating to certain instruments affecting  
27 residential real property.

28 1. When a defendant has been convicted after a trial or pled guilty to  
29 violating either section 175.30 or 175.35 of the penal law in connection  
30 to an instrument that is material to the transfer or purchase of resi-  
31 dential real property, the district attorney may file a motion in the  
32 supreme court in the county where the property that is subject to the  
33 instrument is located on behalf of the victim to void the instrument  
34 that is the subject of such criminal information or indictment. Such  
35 motion must be in writing and provide reasonable notice to all persons  
36 who have an interest in the property affected by such instrument. The  
37 motion papers must state the county or borough, if in the city of New  
38 York, and block, lot, street address of such property, and a description  
39 of such property. The motion papers must state the grounds of the  
40 motion, must contain sworn allegations of fact supporting such grounds,  
41 and include a copy of the guilty disposition attached to the document.

42 2. Within ten days after filing a motion pursuant to subdivision one  
43 of this section, the district attorney shall record a copy of the notice  
44 of motion in the office of the clerk of the county in which the property  
45 is situated. The notice shall be indexed by the clerk in the manner  
46 prescribed by subdivision (c) of rule sixty-five hundred eleven of the  
47 civil practice law and rules for a notice of pendency of action and  
48 shall have the same effect as such notice.

49 3. The supreme court must conduct a hearing and make findings of fact  
50 essential to the determination whether to declare the instrument  
51 described in subdivision one of this section void ab initio. All persons  
52 providing factual information at such hearing must testify under oath.  
53 There will be a rebuttable presumption that where a party is convicted  
54 after a trial in criminal court or a guilty plea to either section  
55 175.30 or section 175.35 of the penal law in connection with an instru-

1 ment that is material to the transfer or sale of residential real prop-  
2 erty, that such instrument is void ab initio.

3 4. Upon the defendant's conviction of or guilty plea to section 175.30  
4 or section 175.35 of the penal law as described in subdivision one of  
5 this section, and after conducting a hearing pursuant to subdivision  
6 three of this section, a court shall make a determination and if appro-  
7 priate shall order that the instrument described in subdivision one of  
8 this section be declared void ab initio or grant other appropriate  
9 relief to the victim. The order of the court shall describe the nature  
10 of the false statement or false information contained in such instru-  
11 ment. A copy of such instrument shall be attached to the order of the  
12 court.

13 5. If the order relates to an instrument that has been filed with,  
14 registered, or recorded in a public office, the district attorney shall  
15 record a certified copy of such order in the office of the recording  
16 officer of the county in which such property is situated, in the same  
17 manner as a conveyance duly acknowledged or proved and certified so as  
18 to entitle it to be recorded. Such recording officer shall record the  
19 same in his or her said office.

20 6. For purposes of this section, "all persons who have an interest in  
21 the property affected by such instrument" shall mean all parties who  
22 have recorded an instrument affecting the real property that is the  
23 subject of the instrument described in subdivision one of this section,  
24 including any party or entity that may have liens of interest on the  
25 property, and any current residents of the property, as of the date of  
26 the filing of the criminal information or indictment.

27 7. Nothing in this section shall be deemed to inhibit or prevent a  
28 party's right to appeal such order.

29 § 8. This act shall take effect immediately.