Foreclosure Protection Act
Chapter 76 Article 27
§§76-2701 to 76-2728

This Act is administered by the Attorney General

76-2701
Act, how cited.

Sections 76-2701 to 76-2728 shall be known and may be cited as the Nebraska Foreclosure Protection Act.

Source:
Laws 2008, LB123, § 1.
Effective date July 18, 2008

76-2702
Legislative findings and intent.

The Legislature hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many homeowners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity from their homes. There is a compelling need to curtail and prevent the most deceptive and unconscionable of these business practices, provide each homeowner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the Legislature that all violations of the Nebraska Foreclosure Protection Act have a significant public impact and that the terms of the act be liberally construed to achieve these purposes.

Source:
Laws 2008, LB123, § 2.
Effective date July 18, 2008

76-2703
Definitions, where found.

For purposes of the Nebraska Foreclosure Protection Act, unless the context otherwise requires, the definitions found in sections 76-2704 to 76-2712 apply.

Source:
Laws 2008, LB123, § 3.
Effective date July 18, 2008

76-2704
Associate, defined.

Associate means a partner, a subsidiary, an affiliate, an agent, or any other person working in association with a foreclosure consultant or an equity purchaser. Associate does not include a person who is excluded from the definition of an equity purchaser or a foreclosure consultant.

Source:
Laws 2008, LB123, § 4.
Effective date July 18, 2008

76-2705
Equity purchase contract, defined.

Equity purchase contract means an agreement between an equity purchaser and a homeowner pertaining to the acquisition of title to the homeowner's personal residence.

Source:
Laws 2008, LB123, § 5.
Effective date July 18, 2008

76-2706
Equity purchaser, defined.

Equity purchaser means a person who, in the course of the person's business, vocation, or occupation, acquires title to a residence in foreclosure. Equity purchaser does not include a person who acquires such title:

(1) For the purpose of using such property as his or her personal residence for at least one year;

(2) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record, if such consensual

lien or encumbrance is recorded in the register of deeds office of the county where the residence in foreclosure is located prior to a foreclosure sale;

(3) By a deed from any trustee, sheriff, or other person appointed by a court as a result of a foreclosure sale;

(4) At a sale of property authorized by statute;

(5) By order or judgment of any court;

(6) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of such person; or

(7) While performing services as a part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in this state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person.

Source:
Laws 2008, LB123, § 6.
Effective date July 18, 2008

76-2707
Evidence of debt, defined.

Evidence of debt means a writing that evidences a promise to pay or a right to the payment of a monetary obligation such as a promissory note; bond; negotiable instrument; loan, credit, or similar agreement; or monetary judgment entered by a court of competent jurisdiction.

Source:
Laws 2008, LB123, § 7.
Effective date July 18, 2008

76-2708
Foreclosure consultant, defined.

(1) Foreclosure consultant means a person who:

(a) Does not, directly or through an associate, take or acquire any interest in or title to the residence in foreclosure; and

(b) In the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a homeowner to perform, in exchange for compensation from the homeowner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

(i) Stop or postpone a foreclosure sale;

(ii) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;

(iii) Assist the homeowner in exercising a right to cure a default;

(iv) Obtain an extension of the period within which the homeowner may cure a default;

(v) Obtain a waiver of an acceleration clause 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;

(vi) Assist the homeowner to obtain a loan or an advance of funds;

(vii) Avoid or reduce the impairment of the homeowner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, any foreclosure sale or the granting of a deed in lieu of foreclosure, or any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;

(viii) In any way delay, hinder, or prevent the foreclosure upon the homeowner's residence; or

(ix) Assist the homeowner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.

(2) Foreclosure consultant does not include:

(a) A person licensed to practice law in this state while performing any activity related to the person's attorney-client relationship with a homeowner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;

(b) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;

(c) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance

companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, while the person performs services as part of the person's normal business activities, an affiliate or subsidiary of any of such entities, or an employee or agent acting on behalf of any of such entities;

(d) A person originating or closing a loan in a person's normal course of business, if, as to that loan:

(i) The loan is subject to the requirements of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as the act existed on July 18, 2008; or

(ii) With respect to any junior mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under subdivision (2)(d)(i) of this section or is initially payable on the face of the note or contract to an entity included in subdivision (2)(c) of this section;

(e) A judgment creditor of the homeowner;

(f) A title insurance company or title insurance agent authorized to conduct business in this state while performing title insurance and settlement services;

(g) A person licensed as a real estate broker, associate broker, or real estate salesperson pursuant to the Nebraska Real Estate License Act while the person engages in any activity for which the person is licensed; or

(h) A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.

Source:
Laws 2008, LB123, § 8.
Effective date July 18, 2008

76-2709
Foreclosure consulting contract, defined.

Foreclosure consulting contract means any agreement between a foreclosure consultant and a homeowner.

Source:
Laws 2008, LB123, § 9.
Effective date July 18, 2008

76-2710
Holder of evidence of debt, defined.

Holder of evidence of debt means the person in actual possession of or otherwise entitled to enforce an evidence of debt, except that holder of evidence of debt does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of evidence of debt:

(1) The person who is the obligee of and who is in possession of an original evidence of debt;

(2) The person in possession of an original evidence of debt together with the proper endorsement or assignment thereof to such person;

(3) The person in possession of a negotiable instrument evidencing a debt which has been duly negotiated to such person or to bearer or indorsed in blank; or

(4) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as an agent, a nominee, or a trustee or in a similar capacity for the obligee of the evidence of debt.

Source:
Laws 2008, LB123, § 10.
Effective date July 18, 2008

76-2711
Homeowner, defined.

Homeowner means the owner of a residence in foreclosure, including a vendee under a contract for deed to real property as defined in subdivision (15) of section 45-702.

Source:
Laws 2008, LB123, § 11.
Effective date July 18, 2008

76-2712
Residence in foreclosure, defined.

Residence in foreclosure means a residence or dwelling that is occupied as the homeowner's principal place of residence and against which any type of foreclosure action,

including, but not limited to, the filing of a notice of default of a deed of trust or the filing of a lawsuit to foreclose a mortgage or other lien, has been commenced.

Source:
Laws 2008, LB123, § 12.
Effective date July 18, 2008

76-2713
Foreclosure consulting contract; form; notice required; right to cancel; notice.

(1) A foreclosure consulting contract shall be in writing and provided to and retained by the homeowner, with changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the homeowner.

(2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name, address, facsimile number, and email address of the foreclosure consultant to which a notice of cancellation may be delivered and the date the homeowner signed the contract.

(3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.

(4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialled by each homeowner of the residence in foreclosure and the foreclosure consultant, and shall be acknowledged by a notary public in the presence of the homeowner at the time the contract is signed by the homeowner.

(5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point, boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

NOTICE REQUIRED BY NEBRASKA LAW

..... (NAME OF FORECLOSURE CONSULTANT) OR (HIS/HER/ITS) ASSOCIATE CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DOCUMENT THAT TRANSFERS ANY INTEREST IN YOUR HOME OR PROPERTY TO (HIM/HER/IT) OR (HIS/HER/ITS) ASSOCIATE.

..... (NAME OF FORECLOSURE CONSULTANT) OR (HIS/HER/ITS) ASSOCIATE CANNOT GUARANTEE YOU THAT THEY WILL BE ABLE TO REFINANCE YOUR HOME OR ARRANGE FOR YOU TO KEEP YOUR HOME. YOU

MAY, AT ANY TIME, CANCEL THIS CONTRACT, WITHOUT PENALTY OF ANY KIND.

IF YOU WANT TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE, INDICATING YOUR INTENT TO CANCEL TO ..... (NAME OF FORECLOSURE CONSULTANT) AT ..... (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND EMAIL ADDRESS).

AS PART OF ANY CANCELLATION, YOU (THE HOMEOWNER) MUST REPAY ANY MONEY ACTUALLY SPENT ON YOUR BEHALF BY ..... (NAME OF FORECLOSURE CONSULTANT) PRIOR TO RECEIPT OF THIS NOTICE AND, AS A RESULT OF THIS AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH INTEREST AT THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE BOARD PLUS TWO PERCENTAGE POINTS, WITH THE TOTAL INTEREST RATE NOT TO EXCEED EIGHT PERCENT PER YEAR.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT BEFORE SIGNING.

(6) A completed form in duplicate, captioned NOTICE OF CANCELLATION, shall accompany a foreclosure consulting contract. The notice of cancellation shall:

(a) Be on a separate sheet of paper attached to the contract;

(b) Be easily detachable; and

(c) Contain the following statement, printed in at least fourteen-point type:

NOTICE OF CANCELLATION

..... (DATE OF CONTRACT)

TO: (NAME OF FORECLOSURE CONSULTANT)

(ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND EMAIL ADDRESS)

I HEREBY CANCEL THIS CONTRACT.

..... (DATE)

..... (HOMEOWNER'S SIGNATURE)

(7) A foreclosure consultant shall provide to the homeowner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the homeowner may cancel a foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

Source:
Laws 2008, LB123, § 13.
Effective date July 18, 2008

76-2714
Homeowner; right to cancel foreclosure consulting contract; notice; when effective; repayment of funds.

(1) In addition to any right of rescission available under state or federal law, a homeowner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when a homeowner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile number or email address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the homeowner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or his or her associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the Federal Reserve Board plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the homeowner.

(6) Except as provided in subsection (5) of this section, the right to cancel shall not be conditioned on the repayment of any funds.

Source:
Laws 2008, LB123, § 14.
Effective date July 18, 2008

76-2715
Foreclosure consulting contract; provisions prohibited.

A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

(1) Waive any of the rights specified in sections 76-2713 to 76-2718 or the right to a jury trial;

(2) Consent to jurisdiction for litigation or choice of law in a state other than Nebraska;

(3) Consent to venue in a county other than the county in which the residence in foreclosure is located; or

(4) Impose any costs or fees greater than the actual costs and fees.

Source:
Laws 2008, LB123, § 15.
Effective date July 18, 2008

76-2716
Foreclosure consultant; prohibited acts.

A foreclosure consultant shall not:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(2) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the homeowner that exceeds the prime rate published by the Federal Reserve Board at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;

(3) Take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;

(4) Receive any consideration from a 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 an interest, directly, indirectly, or through an associate, in the real or personal property of a homeowner with whom the foreclosure consultant has contracted;

(6) Obtain a power of attorney from a homeowner for any purpose other than to inspect documents as provided by law; or

(7) Induce or attempt to induce a homeowner to enter into a foreclosure consulting contract that does not comply in all respects with sections 76-2713 to 76-2718.

Source:
Laws 2008, LB123, § 16.
Effective date July 18, 2008

76-2717
Foreclosure consultant or associate; unconscionable transaction or contract; review by court.

(1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2)(a) If a court, as a matter of law, finds a foreclosure consulting contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that a foreclosure consulting contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

Source:
Laws 2008, LB123, § 17.
Effective date July 18, 2008

76-2718
Foreclosure consulting contract and notices; English required; translation into other language.

A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

Source:
Laws 2008, LB123, § 18.
Effective date July 18, 2008

76-2719
Equity purchase contract; form.

Every equity purchase contract shall be written in at least twelve-point, boldface type and fully completed, signed, and dated by the homeowner and equity purchaser prior to the execution of any instrument quitclaiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

Source:
Laws 2008, LB123, § 19.
Effective date July 18, 2008

76-2720
Equity purchase contract; contents; notice.

(1) Every equity purchase contract shall contain the entire agreement of the parties and shall include the following:

(a) The name, business address, telephone number, facsimile number, and email address of the equity purchaser;

(b) The street address and full legal description of the residence in foreclosure;

(c) Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the homeowner, the equity purchase contract shall so state;

(d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;

(e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the homeowner before or after the sale;

(f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;

(g) The terms of any rental agreement or lease;

(h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price, closing costs, commissions, or other fees or costs;

(i) A notice of cancellation as provided in section 76-2722; and

(j) The following notice, in at least fourteen-point, boldface type, completed with the name of the equity purchaser, immediately above the statement required by section 76-2722:

NOTICE REQUIRED BY NEBRASKA LAW

UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED, ... (NAME) OR ANYONE WORKING FOR ..... (NAME) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT.

(2) The equity purchase contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, but does not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

Source:
Laws 2008, LB123, § 20.
Effective date July 18, 2008

76-2721
Homeowner; right to cancel equity purchase contract; limitation; when effective.

(1)(a) In addition to any right of rescission available under state or federal law, a homeowner has the right to cancel an equity purchase contract until midnight of the third business day following the day on which the homeowner signs a contract that complies with the Nebraska Foreclosure Protection Act or until noon on the last business day before the foreclosure sale of the residence in foreclosure, whichever occurs first.

(b) There shall be no right to cancel under the act with regard to any equity purchase contract executed on or after noon of the last business day before the foreclosure sale of the residence in foreclosure, if the homeowner first agrees to enter into an equity purchase

contract with the equity purchaser on or after noon of the last business day before the foreclosure sale.

(2) Cancellation occurs when a homeowner personally delivers written notice of cancellation to the address specified in the equity purchase contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.

(3) A notice of cancellation given by a homeowner need not take the particular form as provided with the equity purchase contract and, however expressed, is effective if it indicates the intention of the homeowner not to be bound by the equity purchase contract.

(4) In the absence of any written notice of cancellation from a homeowner, the execution by the homeowner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the homeowner did not cancel the equity purchase contract.

Source:
Laws 2008, LB123, § 21.
Effective date July 18, 2008

76-2722
Equity purchase contract; Notice of Cancellation; form; copy provided to homeowner.

(1)(a) The equity purchase contract shall contain, as the last provision before the space reserved for the homeowner's signature, a conspicuous statement in at least twelve-point, boldface type, as follows:

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME BEFORE ..... (DATE AND TIME OF DAY). SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

(b) The equity purchaser shall accurately specify, within the equity purchase contract, the date and time of day on which the cancellation right ends.

(c) If no right to cancel the equity purchase contract exists under the Nebraska Foreclosure Protection Act as set forth in subdivision (1)(b) of section 76-2721, the equity purchase contract shall conspicuously state that no such cancellation right exists.

(2) The equity purchase contract shall be accompanied by duplicate completed forms, captioned Notice of Cancellation in at least twelve-point, boldface type if the equity purchase contract is printed or in capital letters if the equity purchase contract is typed, followed by a space in which the equity purchaser shall enter the date on which the homeowner executed the equity purchase contract. Such form shall:

(a) Be attached to the equity purchase contract;

(b) Be easily detachable; and

(c) Contain the following statement, in at least ten-point type if the equity purchase contract is printed or in capital letters if the contract is typed:

NOTICE OF CANCELLATION

..... (ENTER DATE EQUITY PURCHASE CONTRACT WAS SIGNED). YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE ..... (ENTER DATE AND TIME OF DAY). TO CANCEL THIS TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION IN THE UNITED STATES MAIL, POSTAGE PREPAID, TO ....., (NAME OF PURCHASER) AT ..... (STREET ADDRESS OF PURCHASER'S PLACE OF BUSINESS) NOT LATER THAN ..... (ENTER DATE AND TIME OF DAY). I HEREBY CANCEL THIS TRANSACTION

..... (DATE)

..... (SELLER'S SIGNATURE).

(3) The equity purchaser shall provide the homeowner with a copy of the equity purchase contract and the attached notice of cancellation.

(4) The time during which the homeowner may cancel the equity purchase contract does not begin to run until the equity purchaser has complied with this section.

Source:
Laws 2008, LB123, § 22.
Effective date July 18, 2008

76-2723
Option to repurchase; conditions.

A transaction in which a homeowner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and in which an option to repurchase is reserved to the homeowner or is given by the equity purchaser to the homeowner shall be permitted only where all of the following conditions have been met:

(1) The reconveyance contract complies in all respects with section 76-2720;

(2) The reconveyance contract provides the homeowner with a nonwaivable, thirty-day right to cure any default of the reconveyance contract and specifies that the homeowner may exercise this right to cure on at least three separate occasions during the term of such reconveyance contract;

(3) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by the foreclosure, which assumption or discharge shall be accomplished without a violation of the terms and conditions of the liens being assumed or discharged;

(4) The equity purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the homeowner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the homeowner's monthly gross income; and

(5) The price the homeowner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims under section 76-2726, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure, including repairs and capital improvements, and may include below market rent discounts. The equity purchaser shall provide the homeowner with documentation proving such costs and below market rent discounts prior to the homeowner's exercise of the option to purchase.

Source:
Laws 2008, LB123, § 23.
Effective date July 18, 2008

76-2724
Equity purchase contract; provisions prohibited.

A provision in an equity purchase contract between an equity purchaser and a homeowner is void as against public policy if it attempts or purports to:

(1) Waive any of the rights specified in sections 76-2719 to 76-2727 or the right to a jury trial;

(2) Consent to jurisdiction for litigation or choice of law in a state other than Nebraska;

(3) Consent to venue in a county other than the county in which the residence in foreclosure is located; or

(4) Impose any costs or fees greater than the actual costs and fees.

Source:
Laws 2008, LB123, § 24.
Effective date July 18, 2008

76-2725
Equity purchaser; duties; prohibited acts.

(1) The equity purchase contract provisions required by sections 76-2719 to 76-2724 shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the homeowner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

(a) Accept from a homeowner an execution of, or induce a homeowner to execute, an instrument of conveyance of any interest in the residence in foreclosure;

(b) Record with the register of deeds any document, including, but not limited to, the equity purchase contract, or any lease, lien, or instrument of conveyance that has been signed by the homeowner;

(c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or

(d) Pay the homeowner any consideration.

(3) Within ten days following receipt of a notice of cancellation given in accordance with sections 76-2721 and 76-2722, the equity purchaser shall return without condition the original equity purchase contract and any other documents signed by the homeowner.

(4) An equity purchaser shall not make any untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the homeowner will receive after a foreclosure sale, any equity purchase contract term, the homeowner's rights or obligations incident to or arising out of the sale transaction, or the nature of any document that the equity purchaser induces the homeowner to sign or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

Source:
Laws 2008, LB123, § 25.
Effective date July 18, 2008

76-2726
Equity purchaser or associate; unconscionable transaction or contract; review by court.

(1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2)(a) If a court, as a matter of law, finds an equity purchase contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the equity purchase contract, enforce the remainder of the equity purchase contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

Source:
Laws 2008, LB123, § 26.
Effective date July 18, 2008

76-2727

Equity purchase contract and related documents and instruments; English required; translation into other language.

Any equity purchase contract, rental agreement, lease, or option or right to repurchase and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a homeowner shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

Source:
Laws 2008, LB123, § 27.
Effective date July 18, 2008

76-2728
Violation; penalty.

A person who violates any provision of the Nebraska Foreclosure Protection Act is guilty of a Class IV felony.

Source:
Laws 2008, LB123, § 28.
Effective date July 18, 2008