



SERVICING 10

MBA's NATIONAL MORTGAGE SERVICING
CONFERENCE & EXPO 2010
FEBRUARY 23-26, 2010, SAN DIEGO

Foreclosure Law Update



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Foreclosure Law Update

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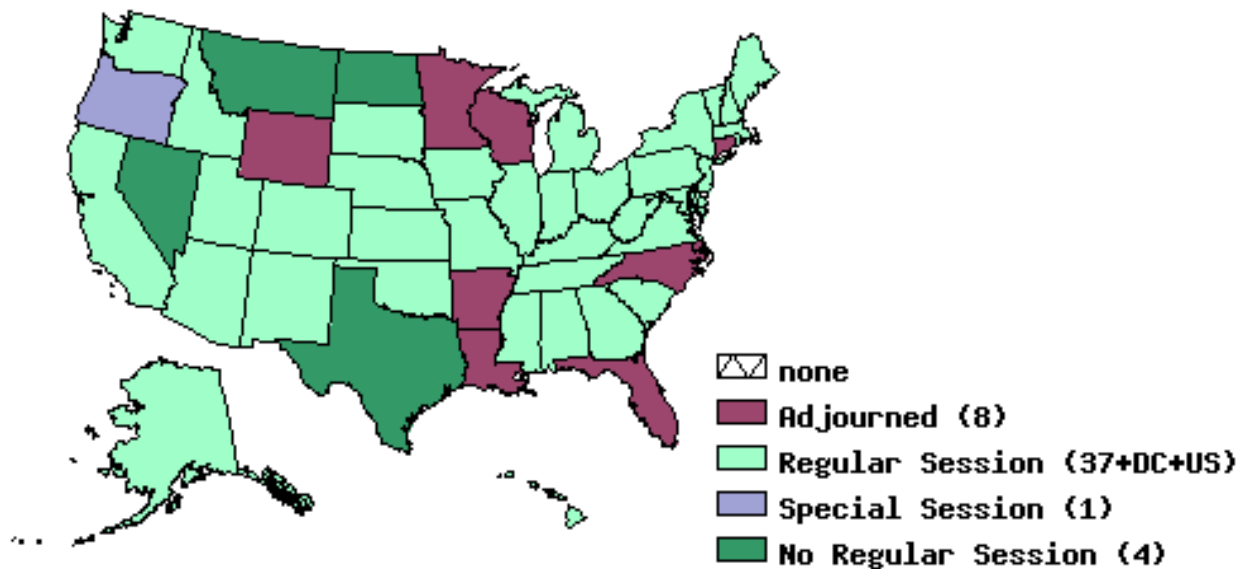


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Table of Contents



State legislatures currently in session

A record number of states revised foreclosure laws or enacted new requirements, such as mandatory mediation, in an effort to help delinquent borrowers save their homes. The panelists will discuss and analyze 2009 legislation affecting

1. FORECLOSURE NOTICES

2. M.E.R.S. Update

3. MEDIATION – A comparative analysis of state mediation requirements:
California; Connecticut; Florida; New Jersey; New York; Nevada, Ohio

4. FILING FEES – States imposing higher foreclosure filing fees

Table of Contents (continued)

5. PROPERTY PRESERVATION – Before, during & after foreclosure

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- a. Foreclosure Registration Requirements
- b. Agency Monitoring/Data Compilation
- c. Oversight and Enforcement

7. LOSS MITIGATION

- Foreclosure Consultants



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Foreclosure Notices

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CALIFORNIA



SBx8 38 (proposed)

- Prior to recording an NOD, a borrower must be provided with an application for a loan modification and other foreclosure avoidance options.
- Prohibits combining collection activity with communication about foreclosure avoidance.
- Deletes declaration requirements of 2923.5, but requires specified declaration as to why loan modification was denied.
- Creates damages if declaration of compliance is insufficient or not recorded.

CALIFORNIA



S.B.306 (Only until 1/2013)

- Extends from 14 to 20 days prior to sale the Notice of Sale to be filed in the county

S.B.306 (Only until 1/2014)

- Short pay requests to mortgagees
 - Must respond within 21 days with an agreement in writing
 - Payoff statement must be good for at least 10 days

GEORGIA

S.B.531 (2008)



- Notice of sale to Borrowers increased from 15 days to 30 days prior to sale
 - Must include contact info at mortgage servicer

IDAHO



S.B.1392

- Trustee required to notify any party in default that they may be approached by parties offering to “save” their homes from foreclosure
 - Statutory warning must be on canary yellow or similarly colored paper
 - Must be in English and Spanish
 - Must give Borrowers telephone number to Consumer Protection Unit of Attorney General

ILLINOIS



H.B.153

- Mortgage foreclosure deeds must state:
 - Mortgagees name
 - Name of contact person
 - Street and mailing address
 - Telephone number

H.B.3863

- Amends the notice of foreclosure to include directions to tenants regarding rights to remain on premises. Failure to provide notice results in \$200 plus active damages

- Purchaser at foreclosure sale must notify occupants within 7 days of sale confirmation

MARYLAND



S.B.842

- Notice is to be sent to the address to “All Occupants” no earlier than 30 days and no later than 10 days prior to the foreclosure sale

MICHIGAN



H.B.4454

- Written notice of foreclosure to Borrower include:
 - Reason for default
 - Amount owed
 - Name, address and phone number of mortgage holder, the mortgage servicer
 - Name of person with authority to modify or make agreements
 - Statement if Borrower requests a meeting, foreclosure cannot commence for 90 days
 - No foreclosure if Borrower abides by modification terms
 - Statement that Borrower can contact an attorney and phone numbers of Michigan Lawyer Referral Service
 - List of housing counselors
 - Within 14 days of notice Borrower can request a meeting for a workout and request a housing counselor attend

MINNESOTA



S.F.1302 (effective for mortgages recorded after 9/1/2009)

- Modifies mortgage foreclosure notices
- Must advise Borrower that foreclosure prevention counseling is available and lender must offer to refer Borrower to an approved agency. Notice must be given with notice of default.
- Notice of sale is required to include:
 - Mortgagor, mortgagee, assignee if any
 - Recording data
 - Legal description, “conforming substantially to that contained in the mortgage”
 - Time and place of sale
 - Time allowed for redemption
 - If an owner-occupied, single family residence, notice must state date by which property must be vacated if loan not reinstated or property redeemed. Time to vacate must be stated by 11:59pm on the last day.
 - If mortgagor wants to reduce redemption period after the 1st publication notice, certain specific language must be included in the notice in all caps

MINNESOTA (continued)



- Notice of sale shall also include, if known:
 - Physical street address, city and zip code of mortgaged premises
 - Name of servicer and lender
 - Tax parcel number
 - Mortgage ID number
 - Name of residential mortgage originator if stated on mortgage

NEVADA

A.B 140

- Foreclosure notices must be sent to tenants or subtenants in actual occupation of the property
- Makes it unlawful to remove a Notice of Sale posted on the property
- Landlord must give notice to prospective tenants if a property is subject of foreclosure

NEW YORK



S.B.6607

- Lenders/servicers must provide a foreclosure notice to distressed Borrowers at least 90 days before any legal action is taken

OREGON



S.B.628 (sunset 1/2/2014)

- Notice of sale must be served at least 180 days before sale date on residential trust deeds
- Notice of mandatory mediation in advance of trustee's sale must include:
 - Name, address and telephone number for lender
 - Lender account number
 - Name, address and telephone number for trustee
 - Contact data for Oregon State Bar lawyer referral service
 - Advise Borrower that mediation process is mandatory
 - Advise Borrower that each party will bear half the cost of mediation
 - List documents required for mediation
 - Advise Borrower that they are entitled to be represented at mediation by an attorney
- Within 30 days after notice of default sent, trustee must send 2nd notice with details of mediation and identify proposed mediator, to which Borrower may object within 10 days

RHODE ISLAND

S.B.1002



- Requires written notice of availability of foreclosure counseling 45 days prior to initiating foreclosure
 - Must be in English and Spanish

WASHINGTON



S.B.5810

- Notice by 1st class mail and certified mail with return receipt to both occupants and tenants
- Requires, prior to Notice of Default:
 - Mortgagee contact the Borrower and explore alternatives to foreclosure
 - 60 days written notice to tenant the foreclosure sale completed
 - Must advise tenants that they will have 60 days to vacate after sale. Non-tenant occupants have 20 days to vacate.
- At least 30 days prior to sale, trustee must send notice to Borrower at last known address by 1st class mail and certified mail advising:
 - Borrower has the right to contact the Department of Financial Institutions or legal aid hotline for possible assistance or referrals
 - Fore residential loans, the notice must state the name, address and telephone number of the owner of the note and the name, address and telephone number of any servicer.



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MERS Litigation:

the “Good”, the “Bad” and the (Potentially) “Ugly”



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The “Bad”:

- ❑ *Landmark National Bank v. Kesler*, 2009 WL 2633640 (Kan. 2009)
- ❑ *Bellistri v. Ocwen Loan Servicing, LLC*, 284 S.W.3d 619 (MO. Ct. App. 2009)
- ❑ *In re Hawkins*, 2009 WL 901766 (Bankr. D. Nev. 2009)

The (Potentially) “Ugly”:

- ❑ Nevada (4), California (1) and Arizona (2)
 - *Lopez v. Executive Trustee Services, LLC*, No. 3:09-cv-180-ECR-VPC (D. Nev.)
 - *Goodwin v. Executive Trustee Services, LLC*, No. 3:09-cv-00306-ECR (D. Nev.)
 - *Green v. Countrywide Home Loans, Inc.*, No. 3:09-cv-00374-BES (D. Nev.)
 - *Dalton v. CitiMortgage, Inc.* No. 3:09-cv-00534-RCJ (D. Nev.)
 - *Cervantes v. Countrywide Home Loans, Inc.*, No. 09-cv-517-JAT (D. Ariz.)
 - *Robinson v. GE Money Bank*, No. 4:09-cv-227 (D. Ariz.)
 - *Vargas v. Countrywide Home Loans, Inc.*, No. 2:09-cv-2309-SJO (C.D. Cal.)
- ❑ Plaintiffs allege that the designation of MERS impermissibly splits the note from the security and thus rendered the note unsecured. Relies primarily on the negative Nevada BK decision.
- ❑ Seeking to enjoin all foreclosures in CA/NV/AZ

The “Good”:

- ❑ *Jackson v. Mortgage Electronic Registration Systems, Inc.*, 770 N.W.2d 487 (Minn. 2009)
- ❑ *Bucci v. Lehman Brothers Bank, FSB*, No. 09-3888 (R.I. Super. Ct. Aug. 25, 2009)
- ❑ *Ramos v. Mortgage Electronic Registrations System, Inc.*, No. 2:08-CV-1089-ECR-RJJ (D. Nev. March 4, 2009)
- ❑ *Cervantes v. Countrywide Home Loans, Inc.*, No. CV 09-517-PHX-JAT (D. Ariz. Sept. 23, 2009)



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Foreclosure Law Update Mediation

LAW OFFICES OF
DANIEL C. CONSUEGRA



Foreclosure Law Update – Mediation Current Status

Mediation
Currently
Imposed by
Legislation,
Court Order
or Code
(subject to change)

| | |
|---|--|
| California | Nevada |
| Connecticut | New Jersey |
| Delaware | New Mexico: First Judicial District, Santa Fe |
| Florida First Judicial Circuit (Santa Rosa, Okaloosa, Walton counties): Collins Center | New York |
| Florida Eleventh Judicial Circuit (Miami Dade County): Collins Center | Ohio: Cuyahoga County (Cleveland) |
| Florida Nineteenth Judicial Circuit (Indian River, Martin, Okochobee, St. Lucie counties): Collins Center | Ohio: Lucas County (Toledo/ Franklin County/Columbus) |
| Florida: 9th Judicial Circuit | Ohio: Summit County (Akron) |
| Florida: 12th Judicial Circuit (Desoto, Manatee, and Sarasota counties) | Oregon |
| Florida: 18th Judicial Circuit (Brevard & Seminole counties) | Pennsylvania: Allegheny County (Pittsburgh) |
| Indiana | Pennsylvania: Bucks County |
| Kentucky: Jefferson Co./Louisville | Pennsylvania: Philadelphia County |
| Maine | Pennsylvania: Northampton County ³¹ (Easton/Bethlehem) |
| Michigan | Rhode Island: City of Providence |

Pending Legislation & Court Ordered Mediation

- New Mexico
- California
- Ohio
- Wisconsin
- Massachusetts
- Pennsylvania
- Texas
- Florida

Some states have local mediation programs in place while state program is pending

Mediation at Present

- Mandatory and voluntary
- No uniformity at present time
- Mediation Features
 - Financial Statements in advance
 - Attendance
 - Personal appearance
 - Telephone/Electronic
 - Single or Multiple Mediations
 - Mediation Order
- Pre-foreclosure Mediation
- Attorney-supervised Mediation
 - Attorney communication
 - Servicer or Bank Mediation Department
 - Staff-level training

Issues Specific to Florida

- Mandatory in most Florida counties
- Florida Supreme Court order – a good model, but adoption
- No uniformity at present time
- Mediation Companies in Florida
 - Collins Center
 - Mediation, Inc.
- Pre-foreclosure Mediation
- Attorney-supervised Foreclosure Mediation
 - Attorney communication
 - Servicer or Bank Mediation Department
 - Staff-level training



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Mediations in Indiana, Ohio & Kentucky



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- ❑ May 7, 2009
 - ❑ Indiana Legislature signed Indiana Enrolled Act 492
- ❑ 30 days **before** filing complaint, mortgagee must provide written notice on a form proscribed by the Indiana housing and community development authority
 - ❑ Notice Required by State Law
 - ❑ Specifics of notice – required by Creditor – required by debtor
 - ❑ What to include with the complaint?
 - ❑ Next step – settlement conference
- ❑ If settlement conference is not required
 - ❑ Court will issue notice of settlement conference if debtor contacts them
- ❑ Court may order settlement conference any time prior to judgment
- ❑ Settlement conference must be in writing within **7** days after the agreement is reached & should be turned in by Creditor
 - ❑ If no agreement reached – Creditor must inform Court & FC Process can continue

- 2008 - OH General Assembly passed a law regulating the foreclosure process in OH
 - 88 counties have foreclosure mediation program
- All counties have own rules & regulations governing the mediation process
 - Very complex process & requirements vary greatly
- Important determinations to be made once file referred to mediation:
 - Case stayed during mediation process?
 - What stage was case immediately prior to referral?
 - Attendance requirements for mediation
 - Creditor & Borrower requirements prior to Mediation Hearing
- Mediation Hearing
 - Two parts
 - Pre-mediation conference
 - Full Mediation Hearing
- Conclusion
 - Best way to move cases through this process is reviewing borrowers' financials ASAP

- ❑ Jefferson County is only county in KY holding conciliation conferences
 - ❑ Very loose structure – simple process
 - ❑ Not getting great response
- ❑ Once borrowers are served - they have a small window of time to “opt in” to program
 - ❑ If they decline – the window closes and they lost their chance
 - ❑ If they accept – the MC scheduled conference – always on a Thursday
 - ❑ Creditor’s attorneys are required to attend conference
 - ❑ Lender must be present via phone or in person
 - ❑ FC process is **not** stayed for this process UNLESS Creditor’s attorneys fail to appear or cooperate

CALIFORNIA

Orange County Mandatory Mediation Program

- Requires parties to mediate a potential loan modification within days/weeks of a borrower filing a lawsuit and seeking a TRO to enjoin sale of property.
- Servicer must attend mediation – personally?
- A borrower must provide financial data to servicer prior to mediation, but unclear as to when.

NEVADA

Mandatory Mediation – 1 year later

- What's happening at the mediations?
- What's causing the delay?
- New litigation



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Filing Fees: Florida-Specific Issues

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CONSUEGRA

❑ Filing Fees in Florida

- < \$50,000.....\$395
- \$50,000 - \$250,000.....\$900
- > \$250,000.....\$1900

❑ Implementation of Electronic Sales in Florida

Charlotte

Dade

Duval

Manatee

Okaloosa

Pasco

Sarasota

Walton

Palm Beach

Verification of Complaints in Florida

- Effective February 11, 2010
- All complaints are verified under penalty of perjury
- Do you own the note & mortgage, do you have standing?
- MERS and the need for recorded assignments



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PROPERTY PRESERVATION



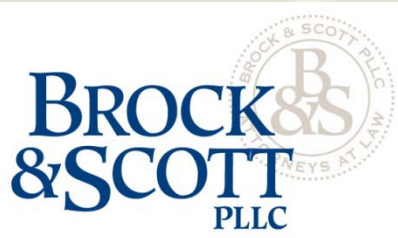
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REGULATORY OVERSIGHT

Registration, Monitoring, Data Compilation, Oversight & Enforcement

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North Carolina – HB 2623 Commissioner of Banks

"§ 45-100, et seq The Emergency Program to Reduce Home Foreclosures Act.

1. SubPrime vs. Non-SubPrime*
2. Send 45-Day Notice Letter
3. Register the loan with NC Commissioner of Banks

* As defined by N.C.

North Carolina “SubPrime” Loans

SubPrime? “guilty until proven innocent”

- Originated before 1/1/05 => non-subprime
- Originated after 12/31/07 => non-subprime
- Loan amount over FNMA limits => non-subprime
- 2nd home / rental property => non-subprime
- HELOC => non-subprime
- Reverse Mortgage => non-subprime
- Construction Loan => non-subprime
- Vacant Land (at time of origination) => non-subprime
- APR under allowable charts (need TIL) => non-subprime

45-Day Notice Letter

§ 45-102. Pre-foreclosure notice for subprime loans.

At least 45 days prior to the filing of a notice of hearing

1. An itemization of all past due amounts causing the loan to be in default.
2. An itemization of any other charges that must be paid in order to bring the loan current
3. A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.
4. The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.
5. The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.
6. The address, telephone number, and other contact information for the consumer complaint section of the Office of Commissioner of Banks.

North Carolina Commissioner of Banks Registration

- Secured access Website
- Log in using Mortgage Servicer's identification
- Enter loan's details, and
- Enter the date of the 45-Day Notice Letter

West Virginia HB 3082

- Authorizes the Commissioner of Banking to establish appropriate forms and file requirements and procedures by rule
- Provides for the reporting of foreclosure statistics by the Commissioner of Banking
- Provides for the gathering and reporting of information pertaining to the sales of residential real estate pursuant to deeds of trust

South Carolina: Supreme Court Administrative Order

- NO FC complaint* may be filed UNTIL HMP solicitation / evaluation has been completed

- The reason for solicitation / evaluation HMP failure must be clearly identified in the complaint

* On a loan that is FMac, FMae or by HMP Servicer

NORTH CAROLINA SB 974

“Loss Mit Affidavit” Law

At the Hearing, if PRIMARY Residence... Clerk of Court shall

1. Inquire as to the efforts of Lender, Servicer & Trustee toward foreclosure avoidance
2. Would additional time be of assistance to borrower in avoiding foreclosure
3. If Yes, Clerk may continue the hearing for up to 60 days

Hawaii HB1044

- Requires written notification of intent to foreclose on properties encumbered by affordable housing property liens
- Enables Hawaii housing finance and development corporation to more easily collect the value of shared appreciation equity and other restrictions on affordable housing property



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Foreclosure Consultants

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Opportunists preying on distressed homeowners for easy profit ?



They may charm your socks
off, but then you won't have socks...

Case Study

London v. Gregory, No. 2164732, 2001 WL 726940 (Mich. App. Feb. 23, 2001)
(*unpublished opinion*)

2 days before foreclosure final and owner's equity of redemption expired, borrower entered into agreement (without legal counsel) to convey property to third party for \$ 1

3rd party agrees to redeem property for \$ 38,231 redemption price and lease back to borrower for 18 months

Borrower had option to purchase at 18 months for \$ 48,239 if timely paid all rent payments

Borrower made only one rent payment, which was late

London v. Gregory

At end of lease, 3rd party moved to evict

Court held:

- deed to third party treated as equitable mortgage
- presumable 3rd party must formally foreclose
- inequitable to allow 3rd party to acquire property valued at \$ 120,000 for redemption price of \$ 38,231

Judicial propensity- Entertain claims of fraud, forgery, undue influence, duress, absence of legal counsel or unequal bargaining power coupled with inadequate consideration

Foreclosure
Consultant
Regulation

Mortgage
Fraud
Legislation

Mortgage Fraud Legislation

- Creates private cause of action
- Restitution to victim of mortgage fraud
- Administrative development and enforcement of mortgage fraud protection guidelines
- Disclosures to borrowers/third parties
- Criminal penalties

Representative states: Arizona; Florida, Michigan, Minnesota, Mississippi, Missouri, New Jersey; Nevada; Texas

Statutes Regulating Foreclosure Consultants

California Civ. Code § 2945

Colorado Rev. Stat. § 6-1-1102

Illinois Compiled Stat. § 765, Sec. 940/05

Indiana Rev. Stat. § 24-5.5-2-2

Maine, Rev. Stat. §§ 6774-B; 6183

Maryland Real Prop. Code § 7-301

Minnesota Rev. Stat. Ch. 325N

Missouri Rev.Stat. Ch. 401

Nevada, Rev. Stat. Ch 645F.300 -645F.450

New Hampshire Rev.Stat. § 479-B-1

Rhode Island Rev. Stat. Ch. 79 § 5-79-1

Tennessee, Rev. Stat. § 47-18-5401

“Foreclosure Consultant” defined:

- Solicits, represents, offers to any owner to perform for consideration a service to

Stop or postpone a foreclosure sale

Obtain forbearance

Assist owner to exercise reinstatement right

Obtain waiver of acceleration

Assist owner in obtaining loan or funds advance

Avoid credit impairment/restore credit

Save home from foreclosure

Assist in obtaining excess sales proceeds

Exceptions to definition of “Foreclosure Consultant”

- Licensed lawyer, certified public accountant, real estate broker or sales person
- Licensed residential loan servicer or originator
- Lienholder; judgment creditor
- Person acting under express authority of HUD, FHA or other governmental agency
- Non-profit agency exempt under Internal Revenue Code § 501(cc)(3)

Scope of Foreclosure Consultant legislation

- Limits when, from whom, amount of compensation-advance payment generally prohibited
- 1-4 family residential properties
- Written agreements delineating scope of services
- Font size, language, page requirements
- Often prohibits foreclosure consultant from acquiring interest in residence

Scope of Foreclosure Consultant legislation

- Rescission right
- Lease/Option restrictions
- Re-Purchase restrictions/prohibitions
- Formal Settlement
- Civil and Criminal penalties and fines
- Post-conveyance accounting

Foreclosure Law Update

| State | Rescission | Compensation Limits | Lease/Option | Repurchase Rights |
|---------------|------------------------------------|---|--|--|
| California | 3 days | No reference | FC consultant cannot purchase | FC consultant cannot purchase |
| Colorado | Any time | All liens paid; not unconscionable | Reasonable ability to repay-presumed w/60% D/I ratio | Unconscionable if option price > 25% of purchase price |
| Illinois | Until FC Consultant fully performs | 82% of FMV or elimination all debt if not > 125% of purchaser's costs | Reasonable ability to repay-unreasonable w/o back-up documentation | 82% FMV and option price > 25% of purchase price |
| Indiana | 7 days | 66% net proceeds to owner if sold w/in 18 months of conveyance | Reasonable ability to repay | Not unconscionable |
| Maine | Until transfer of property | \$75 initial/one time fee; not > 15% of debt reduction | Prohibited | Prohibited |
| Maryland | Any time | 82% net proceeds to owner if sold w/in 18 months of conveyance | Reasonable ability to repay-presumed w/60% D/I ratio | Not unconscionable |
| Minnesota | 3 days | 82% net proceeds to owner if sold w/in 15 months of conveyance | Reasonable ability to repay-presumed w/60% D/I ratio | Not unfair/commercially unreasonable |
| Missouri | 3 days | No reference | FC consultant cannot purchase | FC consultant cannot purchase |
| Nevada | Until sold to BFP | Prior notice; full performance | Prohibited | Prohibited |
| New Hampshire | 5 days | 90% net proceeds to owner if sold w/in 36 months of conveyance | Reasonable ability to repay | No reference; must be bona fide market sale |
| Rhode Island | 3 days after contract signed | No reference | FC consultant cannot purchase | FC consultant cannot purchase |
| Tennessee | 3 days after contract signed | Prior notice; full performance | Not unconscionable | Not unconscionable |

CALIFORNIA

S.B. 94

Signed by governor 10/11/09, Chapter 630



Existing law broadly defines “Foreclosure Consultant” as one who helps a party in foreclosure for compensation and imposes regulations on such consultants (Cal. Civ. Code § 2945 et.seq.)

S.B. 94 excludes real estate licensee and finance lender from definition when acting under authority of the license;
Commissioner of Corporations can no longer terminate the finance lender’s exclusion

DELAWARE



H.B. 232

Signed by governor 10/05/09, Chapter 213

Requires that businesses offering to negotiate modification of residential mortgage loans in foreclosure comply with the “Mortgage Rescue Fraud Protection Act” (6 Del. C. Ch 24B)



HAWAII

S.B. 34/35

Signed by governor 5/20/09, Act 66

Excludes licensed real estate brokers and salespersons from definition of distressed property consultants in the Mortgage Foreclosure Rescue Fraud Prevention Act. (S.B. 34)

Prohibits certain conduct relating to the acquisition of an ownership interest in distressed property by licensed real estate brokers and salespersons. (S.B.34)

Amends definition of "distressed property consultant" to exclude certified public accountants (S.B.35)

INDIANA

H.B. 1176

Signed by governor 4/30/09, Public Law 52



Requires a foreclosure consultant to retain all records related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract.

Prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law.

INDIANA (H.B. 1176)



Prohibits making certain representations with respect to:

- a mortgage or real estate transaction; or
- the property that is the subject of the transaction;
- if the representation is not true and the person knows or reasonably should know that the representation is not true..

MAINE



L.D. 503 (An Act to Regulate Foreclosure Negotiators)

Signed by governor 6/09/09, Public Law 327

Effective date: 1/1/2010

Must act in good faith with fair dealing when providing debt management services relating to consumer's residential mortgage

Consequential damages, in addition to all other legal remedies

MAINE (L.D. 503- *An Act to Regulate Foreclosure Negotiators*)



If the services include sale or transfer of an interest in real property, written notice to consumer including:

- right to cancel
- names & contact numbers for 3rd party housing counselors approved by HUD;
- whether consumer will be liable for deficiency

MINNESOTA



H.F. 903

Signed by governor 5/21/09, Public Chapter 14

Broadens definition of “services” provided by foreclosure consultant to include those performed on behalf of parties other than the owner of a residence in foreclosure

NEVADA



A.B. 152

Signed by governor 5/13/09, Chapter 330

Defines the term “loan modification consultant”

Requires licensing of foreclosure consultant

- 20 pre-licensing hours of instructions
- continuing legal education requirements
- must post bond

NEVADA (A.B. 152)



Executed agreement with homeowner required before initial foreclosure rescue action.

Must deposit compensation into trust account; withdraw only when service completed

Maintain records of compensation receipt/disbursement

Expands definition of “homeowner” to include “record owner of “residence” and delete requirement that residence be in foreclosure

NEVADA (A.B. 152)



Exempts attorney at law from definition of foreclosure consultant unless attorney's services are in the course of his employment by or affiliation with a mortgage broker or mortgage agent

TENNESSEE



H.B. 2218

Signed by governor 5/13/09, Amends Public Chapter 196

Prohibits foreclosure consultants from

- Engaging in unfair, false, deceptive, and/or misleading acts
- Initiating foreclosure rescue services without a written agreement with the homeowner;
- Inducing a homeowner to sign an agreement not legally complaint
- Not honoring consumer's request to cancel agreement and refund monies paid within 10 business days

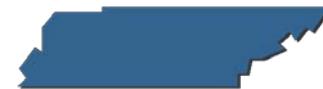
TENNESSEE (H.B. 2218)



Requires written agreement

- 12 point upper case type
- signed by both parties
- includes name, physical address, telephone number and electronic email address of foreclosure consultant
- date of agreement cannot be earlier than the date borrower signs
- provide copy of agreement to homeowner to review at least 1 business day before homeowner signs
- includes right of cancellation

TENNESSEE ([H.B. 2218](#))



Written Notice of Cancellation

- right to cancel without penalty within 3 business days after signing
- must appear above signature line in at least 12-point upper case type that substantially conforms with statute
- right cannot be waived or modified by homeowner
- if rescission exercised, all payments to foreclosure consultant must be returned to homeowner within 10 business days after receipt of cancellation notice.

TENNESSEE ([H.B. 2218](#))



Provide homeowner with copy of signed agreement **within 3 hours** after signing

Non-compliant agreement VOID and UNENFORCEABLE

WASHINGTON



H.B. 1132

Signed by governor 3/25/09, Chapter 15

Exempts licensed real estate brokers and salespersons from the definition of "distressed home consultant" when the broker or salesperson is providing services governed under the real estate brokerage laws and the services do not result in a distressed home conveyance

Specifies that offering certain services does not make a person a distressed home consultant when the homeowner is represented by an attorney or a licensed real estate broker or salesperson in the transaction.

Trivia Question # 1

What was the first state to enact mortgage fraud legislation?

California

Florida

Georgia

New York

Pennsylvania

Trivia Question # 2

In what state is the most expensive real estate returned to the lender as a Deed In Lieu of foreclosure?

California

Florida

Hawaii

Nevada

New York

Trivia Question # 3

In what state was the longest contested foreclosure pending?

California

Michigan

New Mexico

Ohio

Texas



SERVICING 10