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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 2. CONTRACTS [1549 - 1701] (*Part 2 enacted 1872.*)

TITLE 5. EXTINCTION OF CONTRACTS [1682 - 1701] (*Title 5 enacted 1872.*)

CHAPTER 2.5. Home Equity Sales Contracts [1695 - 1695.17] (*Chapter 2.5 added by Stats. 1979, Ch. 1029.*)

1695. (a) The Legislature finds and declares that homeowners whose residences are in foreclosure have been subjected to fraud, deception, and unfair dealing by home equity purchasers. The recent rapid escalation of home values, particularly in the urban areas, has resulted in a significant increase in home equities which are usually the greatest financial asset held by the homeowners of this state. During the time period between the commencement of foreclosure proceedings and the scheduled foreclosure sale date, homeowners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to the importunities of equity purchasers who induce homeowners to sell their homes for a small fraction of their fair market values through the use of schemes which often involve oral and written misrepresentations, deceit, intimidation, and other unreasonable commercial practices.

(b) The Legislature declares that it is the express policy of the state to preserve and guard the precious asset of home equity, and the social as well as the economic value of homeownership.

(c) The Legislature further finds that equity purchasers have a significant impact upon the economy and well-being of this state and its local communities, and therefore the provisions of this chapter are necessary to promote the public welfare.

(d) The intent and purposes of this chapter are the following:

(1) To provide each homeowner with information necessary to make an informed and intelligent decision regarding the sale of his or her home to an equity purchaser; to require that the sales agreement be expressed in writing; to safeguard the public against deceit and financial hardship; to insure, foster, and encourage fair dealing in the sale and purchase of homes in foreclosure; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to afford homeowners a reasonable and meaningful opportunity to rescind sales to equity purchasers; and to preserve and protect home equities for the homeowners of this state.

(2) This chapter shall be liberally construed to effectuate this intent and to achieve these purposes.

(*Added by Stats. 1979, Ch. 1029.*)

1695.1. The following definitions apply to this chapter:

(a) "Equity purchaser" means any person who acquires title to any residence in foreclosure, except a person who acquires such title as follows:

(1) For the purpose of using such property as a personal residence.

(2) By a deed in lieu of foreclosure of any voluntary lien or encumbrance of record.

(3) By a deed from a trustee acting under the power of sale contained in a deed of trust or mortgage at a foreclosure sale conducted pursuant to Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4 of Division 3.

(4) At any sale of property authorized by statute.

(5) By order or judgment of any court.

(6) From a spouse, blood relative, or blood relative of a spouse.

(b) "Residence in foreclosure" and "residential real property in foreclosure" means residential real property consisting of one- to four-family dwelling units, one of which the owner occupies as his or her principal place of residence, and against which there is an outstanding notice of default, recorded pursuant to Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4 of Division 3.

(c) "Equity seller" means any seller of a residence in foreclosure.

(d) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(e) "Contract" means any offer or any contract, agreement, or arrangement, or any term thereof, between an equity purchaser and equity seller incident to the sale of a residence in foreclosure.

(f) "Property owner" means the record title owner of the residential real property in foreclosure at the time the notice of default was recorded.

(Amended by Stats. 1980, Ch. 423, Sec. 4. Effective July 11, 1980.)

1695.2. Every contract shall be written in letters of a size equal to 10-point bold type, in the same language principally used by the equity purchaser and equity seller to negotiate the sale of the residence in foreclosure and shall be fully completed and signed and dated by the equity seller and equity purchaser prior to the execution of any instrument of conveyance of the residence in foreclosure.

(Added by Stats. 1979, Ch. 1029.)

1695.3. Every contract shall contain the entire agreement of the parties and shall include the following terms:

(a) The name, business address, and the telephone number of the equity purchaser.

(b) The address of the residence in foreclosure.

(c) The total consideration to be given by the equity purchaser in connection with or incident to the sale.

(d) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature which the equity purchaser represents he will perform for the equity seller before or after the sale.

(e) The time at which possession is to be transferred to the equity purchaser.

(f) The terms of any rental agreement.

(g) A notice of cancellation as provided in subdivision (b) of Section 1695.5.

(h) The following notice in at least 14-point boldface type, if the contract is printed or in capital letters if the contract is typed, and completed with the name of the equity purchaser, immediately above the statement required by Section 1695.5(a):

"NOTICE REQUIRED BY CALIFORNIA 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."

The contract required by this section shall survive delivery of any instrument of conveyance of the residence in foreclosure, and shall have no effect on persons other than the parties to the contract.

(Amended by Stats. 1980, Ch. 423, Sec. 5. Effective July 11, 1980.)

1695.4. (a) In addition to any other right of rescission, the equity seller has the right to cancel any contract with an equity purchaser until midnight of the fifth business day following the day on which the equity seller signs a contract that complies with this chapter or until 8 a.m. on the day scheduled for the sale of the property pursuant to a power of sale conferred in a deed of trust, whichever occurs first.

(b) Cancellation occurs when the equity seller personally delivers written notice of cancellation to the address specified in the contract or sends a telegram indicating cancellation to that address.

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

1695.5. (a) The contract shall contain in immediate proximity to the space reserved for the equity seller's signature a conspicuous statement in a size equal to at least 12-point bold type, if the contract is printed or in capital letters if the contract is typed, 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."
The equity purchaser shall accurately enter the date and time of day on which the rescission right ends.
(b) The contract shall be accompanied by a completed form in duplicate, captioned "notice of cancellation" in a size equal to 12-point bold type, if the contract is printed or in capital letters if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the equity seller executes any contract. This form shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point, if the contract is printed or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:
"NOTICE OF CANCELLATION
_____ (Enter date contract 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 cancellation notice, or send a telegram
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)"

(c) The equity purchaser shall provide the equity seller with a copy of the contract and the attached notice of cancellation.

(d) Until the equity purchaser has complied with this section, the equity seller may cancel the contract.

(Amended by Stats. 1997, Ch. 50, Sec. 2. Effective January 1, 1998.)

1695.6. (a) The contract as required by Sections 1695.2, 1695.3, and 1695.5, shall be provided and completed in conformity with those sections by the equity purchaser.

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

(1) Accept from any equity seller an execution of, or induce any equity seller to execute, any instrument of conveyance of any interest in the residence in foreclosure.

(2) Record with the county recorder any document, including, but not limited to, any instrument of conveyance, signed by the equity seller.

(3) Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party, provided no grant of any interest or encumbrance shall be defeated or affected as against a bona fide purchaser or encumbrancer for value and without notice of a violation of this chapter, and knowledge on the part of any such person or entity that the property was "residential real property in foreclosure" shall not constitute notice of a violation of this chapter. This section shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure.

(4) Pay the equity seller any consideration.

(c) Within 10 days following receipt of a notice of cancellation given in accordance with Sections 1695.4 and 1695.5, the equity purchaser shall return without condition any original contract and any other documents signed by the equity seller.

(d) An equity purchaser shall make no untrue or misleading statements regarding the value of the residence in foreclosure, the amount of proceeds the equity seller will receive after a foreclosure sale, any contract term, the equity seller's rights or obligations incident to or arising out of the sale transaction, the nature of any document which the equity purchaser induces the equity seller to sign, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

(e) Whenever any equity purchaser purports to hold title as a result of any transaction in which the equity seller grants the residence in foreclosure by any instrument which purports to be an absolute conveyance and reserves or is given by the equity purchaser an option to repurchase such residence, the equity purchaser shall not cause any encumbrance or encumbrances to be placed on such property or grant any interest in such property to any other person without the written consent of the equity seller. Nothing in this subdivision shall preclude the application of paragraph (3) of subdivision (b).

(Amended by Stats. 1997, Ch. 50, Sec. 3. Effective January 1, 1998.)

1695.7. An equity seller may bring an action for the recovery of damages or other equitable relief against an equity purchaser for a violation of any subdivision of Section 1695.6 or Section 1695.13. The equity seller shall recover actual damages plus reasonable attorneys' fees and costs. In addition, the court may award exemplary damages or equitable relief, or both, if the court deems such award proper, but in any event shall award exemplary damages in an amount not less than three times the equity seller's actual damages for any violation of paragraph (3) of subdivision (b) of Section 1695.6 or Section 1695.13; or the court may award a civil penalty of up to two thousand five hundred dollars (\$2,500), but it may not award both exemplary damages and a civil penalty. Any action brought pursuant to this section shall be commenced within four years after the date of the alleged violation.

(Amended by Stats. 2003, Ch. 74, Sec. 1. Effective January 1, 2004.)

1695.8. Any equity purchaser who violates any subdivision of Section 1695.6 or who engages in any practice which would operate as a fraud or deceit upon an equity seller shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000), by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment for each violation.

(Amended by Stats. 2011, Ch. 15, Sec. 32. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

1695.9. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

(Added by Stats. 1979, Ch. 1029.)

1695.10. Any waiver of the provisions of this chapter shall be void and unenforceable as contrary to the public policy.

(Added by Stats. 1979, Ch. 1029.)

1695.11. If any provision of this chapter, or if any application thereof to any person or circumstance is held unconstitutional, the remainder of this chapter and the application of its provisions to other persons and circumstances shall not be affected thereby.

(Added by Stats. 1979, Ch. 1029.)

1695.12. In any transaction in which an equity seller purports to grant a residence in foreclosure to an equity purchaser by any instrument which appears to be an absolute conveyance and reserves to himself or herself or is given by the equity purchaser an option to repurchase, such transaction shall create a presumption affecting the burden of proof, which may be overcome by clear and convincing evidence to the contrary that the transaction is a loan transaction, and the purported absolute conveyance is a mortgage; however, such presumption shall not apply to a bona fide purchaser or encumbrancer for value without notice of a violation of this chapter, and knowledge on the part of any such person or entity that the property was "residential real property in foreclosure" shall not constitute notice of a violation of this chapter. This section shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure.

(Amended by Stats. 1980, Ch. 423, Sec. 9. Effective July 11, 1980.)

1695.13. It is unlawful for any person to initiate, enter into, negotiate, or consummate any transaction involving residential real property in foreclosure, as defined in Section 1695.1, if such person, by the terms of such transaction, takes unconscionable advantage of the property owner in foreclosure.

(Added by Stats. 1980, Ch. 423, Sec. 10. Effective July 11, 1980.)

1695.14. (a) In any transaction involving residential real property in foreclosure, as defined in Section 1695.1, which is in violation of Section 1695.13 is voidable and the transaction may be rescinded by the property owner within two years of the date of the recordation of the conveyance of the residential real property in foreclosure.

(b) Such rescission shall be effected by giving written notice as provided in Section 1691 to the equity purchaser and his successor in interest, if the successor is not a bona fide purchaser or encumbrancer for value as set forth in subdivision (c), and by recording such notice with the county recorder of the county in which the property is located, within two years of the date of the recordation of the conveyance to the equity purchaser. The notice of rescission shall contain the names of the property owner and the name of the equity purchaser in addition to any successor in interest holding record title to the real property and shall particularly describe such real property. The equity purchaser and his successor in interest if the successor is not a bona fide purchaser or encumbrancer for value as set forth in subdivision (c), shall have 20 days after the delivery of the notice in which to reconvey title to the property free and clear of encumbrances created subsequent to the rescinded transaction. Upon failure to reconvey title within such time, the rescinding party may bring an action to enforce the rescission and for cancellation of the deed.

(c) The provisions of this section shall not affect the interest of a bona fide purchaser or encumbrancer for value if such purchase or encumbrance occurred prior to the recordation of the notice of rescission pursuant to subdivision (b). Knowledge that the property was residential real property in foreclosure shall not impair the status of such persons or entities as bona fide purchasers or encumbrancers for value. This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure.

(d) In any action brought to enforce a rescission pursuant to this section, the prevailing party shall be entitled to costs and reasonable attorneys fees.

(e) The remedies provided by this section shall be in addition to any other remedies provided by law.

(Added by Stats. 1980, Ch. 423, Sec. 11. Effective July 11, 1980.)

1695.15. (a) An equity purchaser is liable for all damages resulting from any statement made or act committed by the equity purchaser's representative in any manner connected with the equity purchaser's acquisition of a residence in foreclosure, receipt of any consideration or property from or on behalf of the equity seller, or the performance of any act prohibited by this chapter.

(b) "Representative" for the purposes of this section means a person who in any manner solicits, induces, or causes any property owner to transfer title or solicits any member of the property owner's family or household to induce or cause any property owner to transfer title to the residence in foreclosure to the equity purchaser.

(Added by Stats. 1990, Ch. 1537, Sec. 1.)

1695.16. (a) Any provision of a contract which attempts or purports to limit the liability of the equity purchaser under Section 1695.15 shall be void and shall at the option of the equity seller render the equity purchase contract void. The equity purchaser shall be liable to the equity seller for all damages proximately caused by that provision. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this chapter shall be void at the option of the equity seller only upon grounds as exist for the revocation of any contract.

(b) This section shall apply to any contract entered into on or after January 1, 1991.

(Added by Stats. 1990, Ch. 1537, Sec. 2.)

1695.17. (a) Any representative, as defined in subdivision (b) of Section 1695.15, deemed to be the agent or employee, or both the agent and the employee of the equity purchaser shall be required to provide both of the following:

(1) Written proof to the equity seller that the representative has a valid current California Real Estate Sales License and that the representative is bonded by an admitted surety insurer in an amount equal to twice the fair market value of the real property which is the subject of the contract.

(2) A statement in writing, under penalty of perjury, that the representative has a valid current California Real Estate Sales License, is bonded by an admitted surety insurer in an amount equal to at least twice the value of the real property which is the subject of the contract and has complied with paragraph (1). The written statement required by this paragraph shall be provided to all parties to the contract prior to the transfer of any interest in the real property which is the subject of the contract.

(b) The failure to comply with subdivision (a) shall at the option of the equity seller render the equity purchase contract void and the equity purchaser shall be liable to the equity seller for all damages proximately caused by the failure to comply.

(Added by Stats. 1990, Ch. 1537, Sec. 3.)