

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0339.01 Thomas Morris

SENATE BILL 06-071

SENATE SPONSORSHIP

Veiga,

HOUSE SPONSORSHIP

Massey,

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE INCREASED REGULATION OF AGREEMENTS OFFERED**
102 **TO A HOME OWNER IN CONNECTION WITH FORECLOSURE OF THE**
103 **HOME OWNER'S RESIDENCE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Enacts the "Colorado Foreclosure Protection Act". Prohibits certain deceptive and unconscionable business practices. Requires purchasers of residences in foreclosure and foreclosure consultants to give home owners information necessary to make informed decisions regarding the potential or actual foreclosure of the residences. Specifies minimum requirements for contracts between such parties.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 IN FORECLOSURE. THEREFORE, IT IS THE INTENT OF THE GENERAL
2 ASSEMBLY THAT THE TERMS OF THIS PART 11 BE LIBERALLY CONSTRUED
3 TO ACHIEVE THESE PURPOSES.

4 **6-1-1103. Definitions.** AS USED IN THIS PART 11, UNLESS THE
5 CONTEXT OTHERWISE REQUIRES:

6 (1) "ASSOCIATE" MEANS A PARTNER, SUBSIDIARY, AFFILIATE,
7 AGENT, OR ANY OTHER PERSON WORKING IN ASSOCIATION WITH A
8 FORECLOSURE CONSULTANT.

9 (2) "CONTRACT" MEANS A CONTRACT, AGREEMENT, OR
10 ARRANGEMENT, OR ANY TERM THEREOF, BETWEEN AN EQUITY PURCHASER
11 AND AN EQUITY SELLER INCIDENT TO THE SALE OF A RESIDENCE IN
12 FORECLOSURE. "CONTRACT" INCLUDES AN OFFER TO MAKE A CONTRACT.

13 (3) "EQUITY PURCHASER" MEANS A PERSON WHO, IN THE COURSE
14 OF THE PERSON'S BUSINESS, VOCATION, OR OCCUPATION, ACQUIRES TITLE
15 TO A RESIDENCE IN FORECLOSURE; EXCEPT THAT THE TERM DOES NOT
16 INCLUDE A PERSON WHO ACQUIRES SUCH TITLE:

17 (a) FOR THE PURPOSE OF USING SUCH PROPERTY AS HIS OR HER
18 PERSONAL RESIDENCE FOR AT LEAST ONE YEAR;

19 (b) BY A DEED IN LIEU OF FORECLOSURE TO THE HOLDER, OR AN
20 ASSOCIATE OF THE HOLDER, OF A VOLUNTARY LIEN OR ENCUMBRANCE OF
21 RECORD;

22 (c) BY A DEED FROM THE PUBLIC TRUSTEE OR A COUNTY SHERIFF
23 AS A RESULT OF A FORECLOSURE SALE CONDUCTED PURSUANT TO ARTICLE
24 38 OF TITLE 38, C.R.S.;

25 (d) AT A SALE OF PROPERTY AUTHORIZED BY STATUTE;

26 (e) BY ORDER OR JUDGMENT OF ANY COURT; OR

27 (f) FROM THE PERSON'S SPOUSE, RELATIVE, OR RELATIVE OF A

1 SPOUSE, BY THE HALF OR WHOLE BLOOD OR BY ADOPTION.

2 (4) "EQUITY SELLER" MEANS A HOME OWNER.

3 (5) (a) "FORECLOSURE CONSULTANT" MEANS A PERSON WHO, IN
4 THE COURSE OF SUCH PERSON'S BUSINESS, VOCATION, OR OCCUPATION,
5 MAKES A SOLICITATION, REPRESENTATION, OR OFFER TO A HOME OWNER
6 TO PERFORM FOR COMPENSATION OR, FOR COMPENSATION, PERFORMS A
7 SERVICE THAT THE PERSON REPRESENTS WILL DO ANY OF THE FOLLOWING:

8 (I) STOP OR POSTPONE A FORECLOSURE SALE;

9 (II) OBTAIN A FORBEARANCE FROM A BENEFICIARY UNDER A DEED
10 OF TRUST, MORTGAGE, OR OTHER LIEN;

11 (III) ASSIST THE HOME OWNER TO EXERCISE A RIGHT TO CURE
12 PROVIDED IN SECTION 38-38-104, C.R.S., OR A RIGHT TO REDEEM
13 PROVIDED IN SECTION 38-38-302, C.R.S.;

14 (IV) OBTAIN AN EXTENSION OF THE PERIOD WITHIN WHICH THE
15 HOME OWNER MAY REINSTATE HIS OR HER OBLIGATION;

16 (V) OBTAIN A WAIVER OF AN ACCELERATION CLAUSE CONTAINED
17 IN A PROMISSORY NOTE OR CONTRACT SECURED BY A DEED OF TRUST OR
18 MORTGAGE ON A RESIDENCE IN FORECLOSURE OR CONTAINED IN THAT
19 DEED OF TRUST OR MORTGAGE;

20 (VI) ASSIST THE HOME OWNER TO OBTAIN A LOAN OR ADVANCE OF
21 FUNDS;

22 (VII) AVOID OR AMELIORATE THE IMPAIRMENT OF THE HOME
23 OWNER'S CREDIT RESULTING FROM THE RECORDING OF A NOTICE OF
24 DEFAULT, NOTICE OF ELECTION AND DEMAND FOR SALE, COMMENCEMENT
25 OF A JUDICIAL FORECLOSURE ACTION, OR THE CONDUCT OF A
26 FORECLOSURE SALE OR THE GRANTING OF A DEED IN LIEU OF
27 FORECLOSURE;

1 (VIII) SAVE THE HOME OWNER'S RESIDENCE FROM FORECLOSURE;

2 OR

3 (IX) ASSIST THE HOME OWNER IN OBTAINING FROM THE
4 BENEFICIARY, MORTGAGEE, OR TRUSTEE OF THE LIEN IN FORECLOSURE, OR
5 FROM COUNSEL FOR SUCH BENEFICIARY, MORTGAGEE, OR TRUSTEE, THE
6 REMAINING OR EXCESS PROCEEDS FROM THE FORECLOSURE SALE OF THE
7 HOME OWNER'S RESIDENCE.

8 (b) EXCEPT WHEN A PERSON IS ENGAGING IN ACTIVITIES OR
9 PROVIDING SERVICES DESIGNED OR INTENDED TO TRANSFER TITLE TO A
10 RESIDENCE IN FORECLOSURE DIRECTLY OR INDIRECTLY TO THAT PERSON,
11 OR AN ASSOCIATE OF THAT PERSON, THE TERM "FORECLOSURE
12 CONSULTANT" DOES NOT INCLUDE:

13 (I) AN INDIVIDUAL ADMITTED TO PRACTICE LAW IN THIS STATE,
14 WHILE PERFORMING ANY ACTIVITY RELATED TO THE INDIVIDUAL'S
15 ATTORNEY-CLIENT RELATIONSHIP WITH A HOME OWNER OR ANY ACTIVITY
16 RELATED TO THE INDIVIDUAL'S ATTORNEY-CLIENT RELATIONSHIP WITH
17 THE BENEFICIARY OF THE LIEN BEING FORECLOSED;

18 (II) A PERSON WHO HOLDS OR IS OWED AN OBLIGATION SECURED
19 BY A LIEN ON ANY RESIDENCE IN FORECLOSURE WHILE THE PERSON
20 PERFORMS SERVICES IN CONNECTION WITH THE OBLIGATION OR LIEN;

21 (III) A PERSON DOING BUSINESS UNDER ANY LAW OF THIS STATE OR
22 THE UNITED STATES THAT REGULATES BANKS, TRUST COMPANIES,
23 SAVINGS AND LOAN ASSOCIATIONS, CREDIT UNIONS, OR INSURANCE
24 COMPANIES, WHILE THE PERSON PERFORMS SERVICES AS A PART OF THE
25 PERSON'S NORMAL BUSINESS ACTIVITIES;

26 (IV) ANY AFFILIATE OF A PERSON DESCRIBED IN SUBPARAGRAPH
27 (III) OF THIS PARAGRAPH (b), WHILE THE AFFILIATE PERFORMS SERVICES

1 AS A PART OF THE AFFILIATE'S NORMAL BUSINESS ACTIVITIES;

2 (V) A JUDGMENT CREDITOR OF THE HOME OWNER, IF THE LEGAL
3 ACTION GIVING RISE TO THE JUDGMENT WAS COMMENCED BEFORE THE
4 NOTICE OF ELECTION AND DEMAND FOR SALE REQUIRED UNDER SECTION
5 38-38-101, C.R.S., AND THE JUDGMENT IS RECORDED IN THE REAL
6 PROPERTY RECORDS OF THE CLERK AND RECORDER OF THE COUNTY WHERE
7 THE RESIDENCE IN FORECLOSURE IS LOCATED;

8 (VI) A LICENSED COLORADO TITLE INSURER, INSURANCE
9 PRODUCER, OR ESCROW COMPANY AUTHORIZED TO CONDUCT BUSINESS IN
10 THE STATE, WHILE PERFORMING TITLE INSURANCE OR SETTLEMENT
11 SERVICES;

12 (VII) A PERSON LICENSED AS A REAL ESTATE BROKER OR REAL
13 ESTATE SALESPERSON UNDER ARTICLE 61 OF TITLE 12, C.R.S., WHILE THE
14 PERSON ENGAGES IN ANY ACTIVITY FOR WHICH THE PERSON IS LICENSED;
15 OR

16 (VIII) A NONPROFIT ORGANIZATION THAT SOLELY OFFERS
17 COUNSELING OR ADVICE TO HOME OWNERS IN FORECLOSURE OR LOAN
18 DEFAULT, UNLESS THE ORGANIZATION IS AN ASSOCIATE OF THE
19 FORECLOSURE CONSULTANT.

20 (6) "FORECLOSURE CONSULTING CONTRACT" MEANS ANY
21 AGREEMENT BETWEEN A FORECLOSURE CONSULTANT AND A HOME OWNER.

22 (7) "HOME OWNER" MEANS THE OWNER OF A RESIDENCE IN
23 FORECLOSURE, INCLUDING A VENDEE UNDER A CONTRACT FOR DEED TO
24 REAL PROPERTY, AS THAT TERM IS DEFINED IN SECTION 38-35-126 (1) (b),
25 C.R.S.

26 (8) "RESIDENCE IN FORECLOSURE" MEANS RESIDENTIAL REAL
27 PROPERTY CONSISTING OF NOT MORE THAN FOUR SINGLE-FAMILY

1 DWELLING UNITS, AT LEAST ONE OF WHICH IS OCCUPIED AS THE HOME
2 OWNER'S PRINCIPAL PLACE OF RESIDENCE, AND AGAINST WHICH RESIDENCE
3 ANY TYPE OF FORECLOSURE ACTION HAS BEEN COMMENCED.

4 SUBPART 2

5 FORECLOSURE CONSULTANTS

6 **6-1-1104. Foreclosure consulting contract.** (1) A FORECLOSURE
7 CONSULTING CONTRACT SHALL BE IN WRITING AND PROVIDED TO AND
8 RETAINED BY THE HOME OWNER, WITHOUT CHANGES, ALTERATIONS, OR
9 MODIFICATIONS, FOR REVIEW AT LEAST TWENTY-FOUR HOURS BEFORE IT
10 IS SIGNED BY THE HOME OWNER.

11 (2) A FORECLOSURE CONSULTING CONTRACT SHALL BE PRINTED IN
12 AT LEAST TWELVE-POINT TYPE AND SHALL INCLUDE THE NAME AND
13 ADDRESS OF THE FORECLOSURE CONSULTANT TO WHICH A NOTICE OF
14 CANCELLATION OR RESCISSION CAN BE MAILED AND THE DATE THE HOME
15 OWNER SIGNED THE CONTRACT.

16 (3) A FORECLOSURE CONSULTING CONTRACT SHALL FULLY
17 DISCLOSE THE EXACT NATURE OF THE FORECLOSURE CONSULTING
18 SERVICES TO BE PROVIDED AND THE TOTAL AMOUNT AND TERMS OF ANY
19 COMPENSATION TO BE RECEIVED BY THE FORECLOSURE CONSULTANT OR
20 ASSOCIATE.

21 (4) A FORECLOSURE CONSULTING CONTRACT SHALL BE DATED AND
22 PERSONALLY SIGNED BY EACH HOME OWNER OF THE RESIDENCE IN
23 FORECLOSURE AND THE FORECLOSURE CONSULTANT AND SHALL BE
24 ACKNOWLEDGED BY A NOTARY PUBLIC IN THE PRESENCE OF THE HOME
25 OWNER AT THE TIME THE CONTRACT IS SIGNED BY THE HOME OWNER.

26 (5) A FORECLOSURE CONSULTING CONTRACT SHALL CONTAIN THE
27 FOLLOWING NOTICE, WHICH SHALL BE PRINTED IN AT LEAST

1 FOURTEEN-POINT BOLD-FACED TYPE, COMPLETED WITH THE NAME OF THE
2 FORECLOSURE CONSULTANT, AND LOCATED IN IMMEDIATE PROXIMITY TO
3 THE SPACE RESERVED FOR THE HOME OWNER'S SIGNATURE:

4 **NOTICE REQUIRED BY COLORADO LAW**

5 _____ (NAME) OR (HIS/HER/ITS) ASSOCIATE CANNOT
6 ASK YOU TO SIGN OR HAVE YOU SIGN ANY DOCUMENT
7 THAT TRANSFERS ANY INTEREST IN YOUR HOME OR
8 PROPERTY TO (HIM/HER/IT) OR (HIS/HER/ITS) ASSOCIATE.

9 _____ (NAME) OR (HIS/HER/ITS) ASSOCIATE CANNOT
10 GUARANTEE YOU THAT THEY WILL BE ABLE TO
11 REFINANCE YOUR HOME OR ARRANGE FOR YOU TO KEEP
12 YOUR HOME.

13 YOU MAY, AT ANY TIME, CANCEL OR RESCIND THIS
14 CONTRACT, WITHOUT PENALTY OF ANY KIND.

15 IF YOU WANT TO CANCEL THIS CONTRACT, MAIL OR
16 DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF
17 CANCELLATION OR RESCISSION, OR ANY OTHER WRITTEN
18 NOTICE, INDICATING YOUR INTENT TO CANCEL OR
19 RESCIND TO _____ (NAME AND ADDRESS OF
20 F O R E C L O S U R E C O N S U L T A N T) A T
21 _____ (ADDRESS OF FORECLOSURE
22 CONSULTANT, INCLUDING FACSIMILE AND ELECTRONIC
23 MAIL ADDRESS).

24 AS PART OF ANY CANCELLATION OR RESCISSION, YOU
25 (THE HOME OWNER) MUST REPAY ANY MONEY SPENT ON
26 YOUR BEHALF BY _____ (NAME OF
27 FORECLOSURE CONSULTANT) PRIOR TO RECEIPT OF THIS

1 NOTICE AND AS A RESULT OF THIS AGREEMENT, WITHIN
2 60 DAYS, ALONG WITH INTEREST CALCULATED AT THE
3 RATE OF 8 PERCENT PER YEAR.

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

9 (6) A COMPLETED FORM IN DUPLICATE, CAPTIONED "NOTICE OF
10 CANCELLATION OR RESCISSION" SHALL ACCOMPANY THE FORECLOSURE
11 CONSULTING CONTRACT. THE NOTICE OF CANCELLATION OR RESCISSION
12 SHALL:

13 (a) BE ON A SEPARATE SHEET OF PAPER ATTACHED TO THE
14 CONTRACT;

15 (b) BE EASILY DETACHABLE; AND

16 (c) CONTAIN THE FOLLOWING STATEMENT, PRINTED IN AT LEAST
17 FOURTEEN-POINT TYPE:

18 NOTICE OF CANCELLATION OR RESCISSION
19 (DATE OF CONTRACT)
20 TO: (NAME OF FORECLOSURE CONSULTANT)
21 (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING
22 FACSIMILE AND ELECTRONIC MAIL)

23 I HEREBY CANCEL AND RESCIND THIS CONTRACT.

24 _____ (DATE)

25 _____ (HOME OWNER'S SIGNATURE)

26 (7) THE FORECLOSURE CONSULTANT SHALL PROVIDE TO THE HOME
27 OWNER A SIGNED, DATED, AND ACKNOWLEDGED COPY OF THE

1 FORECLOSURE CONSULTING CONTRACT AND THE ATTACHED NOTICE OF
2 CANCELLATION OR RESCISSION IMMEDIATELY UPON EXECUTION OF THE
3 CONTRACT.

4 (8) THE TIME DURING WHICH THE HOME OWNER MAY CANCEL OR
5 RESCIND THE FORECLOSURE CONSULTING CONTRACT DOES NOT BEGIN TO
6 RUN UNTIL THE FORECLOSURE CONSULTANT HAS COMPLIED WITH THIS
7 SECTION.

8 **6-1-1105. Right of cancellation and rescission.** (1) IN ADDITION
9 TO ANY OTHER RIGHT UNDER LAW TO CANCEL OR RESCIND A CONTRACT,
10 THE HOME OWNER HAS THE RIGHT TO CANCEL OR RESCIND A FORECLOSURE
11 CONSULTING CONTRACT AT ANY TIME.

12 (2) CANCELLATION OR RESCISSION OCCURS WHEN THE HOME
13 OWNER GIVES WRITTEN NOTICE OF CANCELLATION OR RESCISSION OF THE
14 FORECLOSURE CONSULTING CONTRACT TO THE FORECLOSURE
15 CONSULTANT AT THE ADDRESS SPECIFIED IN THE CONTRACT OR THROUGH
16 ANY FACSIMILE OR ELECTRONIC MAIL ADDRESS IDENTIFIED IN THE
17 CONTRACT OR OTHER MATERIALS PROVIDED TO THE HOME OWNER BY THE
18 FORECLOSURE CONSULTANT.

19 (3) NOTICE OF CANCELLATION OR RESCISSION, IF GIVEN BY MAIL,
20 IS EFFECTIVE WHEN DEPOSITED IN THE UNITED STATES MAIL, PROPERLY
21 ADDRESSED, WITH POSTAGE PREPAID.

22 (4) NOTICE OF CANCELLATION OR RESCISSION NEED NOT BE IN THE
23 FORM PROVIDED WITH THE CONTRACT AND IS EFFECTIVE, HOWEVER
24 EXPRESSED, IF IT INDICATES THE INTENTION OF THE HOME OWNER TO
25 CANCEL OR RESCIND THE FORECLOSURE CONSULTING CONTRACT.

26 (5) AS PART OF THE CANCELLATION OR RESCISSION OF A
27 FORECLOSURE CONSULTING CONTRACT, THE HOME OWNER SHALL REPAY,

1 WITHIN SIXTY DAYS AFTER THE DATE OF CANCELLATION OR RESCISSION,
2 ALL FUNDS PAID OR ADVANCED IN GOOD FAITH PRIOR TO THE RECEIPT OF
3 NOTICE OF CANCELLATION OR RESCISSION BY THE FORECLOSURE
4 CONSULTANT OR ASSOCIATE UNDER THE TERMS OF THE FORECLOSURE
5 CONSULTING CONTRACT, TOGETHER WITH INTEREST CALCULATED AT THE
6 RATE OF EIGHT PERCENT PER YEAR.

7 (6) THE RIGHT TO CANCEL OR RESCIND MAY NOT BE CONDITIONED
8 ON THE REPAYMENT OF ANY FUNDS.

9 **6-1-1106. Waiver of rights - void.** (1) A PROVISION IN A
10 FORECLOSURE CONSULTING CONTRACT IS VOID AS AGAINST PUBLIC POLICY
11 IF THE PROVISION ATTEMPTS OR PURPORTS TO:

12 (a) WAIVE ANY OF THE RIGHTS SPECIFIED IN THIS SUBPART 2 OR
13 THE RIGHT TO A JURY TRIAL;

14 (b) CONSENT TO JURISDICTION FOR LITIGATION OR CHOICE OF LAW
15 IN A STATE OTHER THAN COLORADO;

16 (c) CONSENT TO VENUE IN A COUNTY OTHER THAN THE COUNTY IN
17 WHICH THE PROPERTY IS LOCATED; OR

18 (d) IMPOSE ANY COSTS OR FEES GREATER THAN THE ACTUAL COSTS
19 AND FEES.

20 **6-1-1107. Prohibited acts.** (1) A FORECLOSURE CONSULTANT
21 MAY NOT:

22 (a) CLAIM, DEMAND, CHARGE, COLLECT, OR RECEIVE ANY
23 COMPENSATION UNTIL AFTER THE FORECLOSURE CONSULTANT HAS FULLY
24 PERFORMED EACH AND EVERY SERVICE THE FORECLOSURE CONSULTANT
25 CONTRACTED TO PERFORM OR REPRESENTED THAT THE FORECLOSURE
26 CONSULTANT WOULD PERFORM;

27 (b) CLAIM, DEMAND, CHARGE, COLLECT, OR RECEIVE ANY

1 INTEREST OR ANY OTHER COMPENSATION FOR A LOAN THAT THE
2 FORECLOSURE CONSULTANT MAKES TO THE HOME OWNER THAT EXCEEDS
3 EIGHT PERCENT PER YEAR;

4 (c) TAKE A WAGE ASSIGNMENT, LIEN OF ANY TYPE ON REAL OR
5 PERSONAL PROPERTY, OR OTHER SECURITY TO SECURE THE PAYMENT OF
6 COMPENSATION;

7 (d) RECEIVE ANY CONSIDERATION FROM A THIRD PARTY IN
8 CONNECTION WITH FORECLOSURE CONSULTING SERVICES PROVIDED TO A
9 HOME OWNER UNLESS THE CONSIDERATION IS FIRST FULLY DISCLOSED IN
10 WRITING TO THE HOME OWNER;

11 (e) ACQUIRE AN INTEREST, DIRECTLY, INDIRECTLY, OR THROUGH
12 AN ASSOCIATE, IN THE REAL OR PERSONAL PROPERTY OF A HOME OWNER
13 WITH WHOM THE FORECLOSURE CONSULTANT HAS CONTRACTED;

14 (f) TAKE A POWER OF ATTORNEY FROM A HOME OWNER FOR ANY
15 PURPOSE OTHER THAN TO INSPECT DOCUMENTS AS PROVIDED BY LAW; OR

16 (g) INDUCE OR ATTEMPT TO INDUCE A HOME OWNER TO ENTER
17 INTO A FORECLOSURE CONSULTING CONTRACT THAT DOES NOT COMPLY IN
18 ALL RESPECTS WITH THIS SUBPART 2.

19 **6-1-1108. Criminal penalties.** A PERSON WHO VIOLATES SECTION
20 6-1-1107 IS GUILTY OF A MISDEMEANOR, AS DEFINED IN SECTION
21 18-1.3-504, C.R.S., AND SHALL BE SUBJECT TO IMPRISONMENT IN COUNTY
22 JAIL FOR UP TO ONE YEAR, A FINE OF UP TO TWENTY-FIVE THOUSAND
23 DOLLARS, OR BOTH.

24 **6-1-1109. Unconscionability.** (1) A FORECLOSURE CONSULTANT
25 OR ASSOCIATE SHALL NOT FACILITATE OR ENGAGE IN ANY TRANSACTION
26 THAT IS UNCONSCIONABLE GIVEN THE TERMS AND CIRCUMSTANCES OF THE
27 TRANSACTION.

1 (2) (a) IF A COURT, AS A MATTER OF LAW, FINDS A FORECLOSURE
2 CONSULTANT CONTRACT OR ANY CLAUSE OF SUCH CONTRACT TO HAVE
3 BEEN UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY
4 REFUSE TO ENFORCE THE CONTRACT, ENFORCE THE REMAINDER OF THE
5 CONTRACT WITHOUT THE UNCONSCIONABLE CLAUSE, OR SO LIMIT THE
6 APPLICATION OF ANY UNCONSCIONABLE CLAUSE AS TO AVOID AN
7 UNCONSCIONABLE RESULT.

8 (b) WHEN IT IS CLAIMED OR APPEARS TO THE COURT THAT A
9 FORECLOSURE CONSULTANT CONTRACT OR ANY CLAUSE OF SUCH
10 CONTRACT MAY BE UNCONSCIONABLE, THE PARTIES SHALL BE AFFORDED
11 A REASONABLE OPPORTUNITY TO PRESENT EVIDENCE AS TO ITS
12 COMMERCIAL SETTING, PURPOSE, AND EFFECT, TO AID THE COURT IN
13 MAKING THE DETERMINATION.

14 (c) IN ORDER TO SUPPORT A FINDING OF UNCONSCIONABILITY,
15 THERE MUST BE EVIDENCE OF SOME BAD FAITH OVERREACHING ON THE
16 PART OF THE FORECLOSURE CONSULTANT OR ASSOCIATE SUCH AS THAT
17 WHICH RESULTS FROM AN UNREASONABLE INEQUALITY OF BARGAINING
18 POWER OR OTHER CIRCUMSTANCES IN WHICH THERE IS AN ABSENCE OF
19 MEANINGFUL CHOICE ON THE PART OF ONE OF THE PARTIES, TOGETHER
20 WITH CONTRACT TERMS THAT ARE, UNDER STANDARD INDUSTRY
21 PRACTICES, UNREASONABLY FAVORABLE TO THE FORECLOSURE
22 CONSULTANT OR ASSOCIATE.

23 **6-1-1110. Language.** A FORECLOSURE CONSULTING CONTRACT,
24 AND ALL NOTICES OF CANCELLATION AND RESCISSION PROVIDED FOR
25 THEREIN, SHALL BE WRITTEN IN ENGLISH AND SHALL BE ACCOMPANIED BY
26 A WRITTEN TRANSLATION FROM ENGLISH INTO ANY OTHER LANGUAGE
27 PRINCIPALLY SPOKEN BY THE HOME OWNER, CERTIFIED BY THE PERSON

1 MAKING THE TRANSLATION AS A TRUE AND CORRECT TRANSLATION OF THE
2 ENGLISH VERSION. THE TRANSLATED VERSION SHALL BE PRESUMED TO
3 HAVE EQUAL STATUS AND CREDIBILITY AS THE ENGLISH VERSION.

4 SUBPART 3

5 EQUITY PURCHASERS

6 **6-1-111. Written contract required.** EVERY CONTRACT SHALL
7 BE WRITTEN IN AT LEAST TWELVE-POINT BOLD-FACED TYPE AND FULLY
8 COMPLETED, SIGNED, AND DATED BY THE EQUITY SELLER AND EQUITY
9 PURCHASER PRIOR TO THE EXECUTION OF ANY INSTRUMENT
10 QUIT-CLAIMING, ASSIGNING, TRANSFERRING, CONVEYING, OR
11 ENCUMBERING AN INTEREST IN THE RESIDENCE IN FORECLOSURE.

12 **6-1-112. Written contract - contents - notice.** (1) EVERY
13 CONTRACT SHALL CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES AND
14 SHALL INCLUDE THE FOLLOWING TERMS:

15 (a) THE NAME, BUSINESS ADDRESS, AND TELEPHONE NUMBER OF
16 THE EQUITY PURCHASER;

17 (b) THE STREET ADDRESS AND FULL LEGAL DESCRIPTION OF THE
18 RESIDENCE IN FORECLOSURE;

19 (c) A FULL ASSUMPTION BY THE EQUITY PURCHASER OF ALL
20 LIABILITY WITH RESPECT TO THE LIEN IN FORECLOSURE AND PRIOR LIENS
21 THAT WILL NOT BE EXTINGUISHED BY SUCH FORECLOSURE, WHICH
22 ASSUMPTION SHALL BE ACCOMPLISHED WITHOUT VIOLATION OF THE TERMS
23 AND CONDITIONS OF THE LIEN BEING ASSUMED;

24 (d) THE TOTAL CONSIDERATION TO BE PAID BY THE EQUITY
25 PURCHASER IN CONNECTION WITH OR INCIDENT TO THE ACQUISITION BY
26 THE EQUITY PURCHASER OF THE RESIDENCE IN FORECLOSURE;

27 (e) THE TERMS OF PAYMENT OR OTHER CONSIDERATION,

1 INCLUDING, BUT NOT LIMITED TO, ANY SERVICES OF ANY NATURE THAT
2 THE EQUITY PURCHASER REPRESENTS WILL BE PERFORMED FOR THE
3 EQUITY SELLER BEFORE OR AFTER THE SALE;

4 (f) THE DATE AND TIME WHEN POSSESSION OF THE RESIDENCE IN
5 FORECLOSURE IS TO BE TRANSFERRED TO THE EQUITY PURCHASER;

6 (g) THE TERMS OF ANY RENTAL AGREEMENT OR LEASE;

7 (h) THE SPECIFICATIONS OF ANY OPTION OR RIGHT TO REPURCHASE
8 THE RESIDENCE IN FORECLOSURE, INCLUDING THE SPECIFIC AMOUNTS OF
9 ANY ESCROW DEPOSIT, DOWN PAYMENT, PURCHASE PRICE, CLOSING COSTS,
10 COMMISSIONS, OR OTHER FEES OR COSTS;

11 (i) A NOTICE OF CANCELLATION AS PROVIDED IN SECTION
12 6-1-1114; AND

13 (j) THE FOLLOWING NOTICE, IN AT LEAST FOURTEEN-POINT
14 BOLD-FACED TYPE IF THE CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF
15 THE CONTRACT IS TYPED, AND COMPLETED WITH THE NAME OF THE EQUITY
16 PURCHASER, IMMEDIATELY ABOVE THE STATEMENT REQUIRED BY SECTION
17 6-1-1114:

18 **"NOTICE REQUIRED BY COLORADO LAW**

19 **UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT**
20 **HAS ENDED, (NAME) OR ANYONE WORKING FOR**
21 **_____ (NAME) CANNOT ASK YOU TO SIGN OR**
22 **HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT."**

23 (2) THE CONTRACT REQUIRED BY THIS SECTION SHALL SURVIVE
24 DELIVERY OF ANY INSTRUMENT OF CONVEYANCE OF THE RESIDENCE IN
25 FORECLOSURE, BUT SHALL NOT HAVE ANY EFFECT ON PERSONS OTHER
26 THAN THE PARTIES TO THE CONTRACT OR AFFECT TITLE TO THE RESIDENCE
27 IN FORECLOSURE.

1 **6-1-1113. Rescission - cancellation.** (1) IN ADDITION TO ANY
2 OTHER RIGHT OF RESCISSION, THE EQUITY SELLER HAS THE RIGHT TO
3 CANCEL A CONTRACT WITH AN EQUITY PURCHASER UNTIL 12 MIDNIGHT OF
4 THE FIFTH BUSINESS DAY FOLLOWING THE DAY ON WHICH THE EQUITY
5 SELLER SIGNS A CONTRACT THAT COMPLIES WITH THIS PART 11 OR UNTIL
6 12 NOON ON THE DAY BEFORE THE DAY SCHEDULED FOR THE
7 FORECLOSURE SALE OF THE RESIDENCE IN FORECLOSURE, WHICHEVER
8 OCCURS FIRST.

9 (2) CANCELLATION OCCURS WHEN THE EQUITY SELLER
10 PERSONALLY DELIVERS WRITTEN NOTICE OF CANCELLATION TO THE
11 ADDRESS SPECIFIED IN THE CONTRACT OR UPON DEPOSIT OF SUCH NOTICE
12 IN THE UNITED STATES MAIL, PROPERLY ADDRESSED, WITH POSTAGE
13 PREPAID.

14 (3) A NOTICE OF CANCELLATION GIVEN BY THE EQUITY SELLER
15 NEED NOT TAKE THE PARTICULAR FORM AS PROVIDED WITH THE CONTRACT
16 AND, HOWEVER EXPRESSED, IS EFFECTIVE IF IT INDICATES THE INTENTION
17 OF THE EQUITY SELLER NOT TO BE BOUND BY THE CONTRACT.

18 **6-1-1114. Notice of rescission or cancellation.** (1) (a) THE
19 CONTRACT SHALL CONTAIN, AS THE LAST PROVISION BEFORE THE SPACE
20 RESERVED FOR THE EQUITY SELLER'S SIGNATURE, A CONSPICUOUS
21 STATEMENT IN AT LEAST TWELVE-POINT BOLD-FACED TYPE IF THE
22 CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF THE CONTRACT IS TYPED,
23 AS FOLLOWS:

24 "YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF
25 YOUR HOUSE WITHOUT ANY PENALTY OR OBLIGATION AT
26 ANY TIME BEFORE _____ (DATE AND
27 TIME OF DAY). SEE THE ATTACHED NOTICE OF

1 **CANCELLATION FORM FOR AN EXPLANATION OF THIS**
2 **RIGHT."**

3 (b) THE EQUITY PURCHASER SHALL ACCURATELY SPECIFY THE
4 DATE AND TIME OF DAY ON WHICH THE RESCISSION RIGHT ENDS.

5 (2) THE CONTRACT SHALL BE ACCOMPANIED BY DUPLICATE
6 COMPLETED FORMS, CAPTIONED "NOTICE OF CANCELLATION" IN AT LEAST
7 TWELVE-POINT BOLD-FACED TYPE IF THE CONTRACT IS PRINTED OR IN
8 CAPITAL LETTERS IF THE CONTRACT IS TYPED, FOLLOWED BY A SPACE IN
9 WHICH THE EQUITY PURCHASER SHALL ENTER THE DATE ON WHICH THE
10 EQUITY SELLER EXECUTED THE CONTRACT. SUCH FORM SHALL:

11 (a) BE ATTACHED TO THE CONTRACT;

12 (b) BE EASILY DETACHABLE; AND

13 (c) CONTAIN THE FOLLOWING STATEMENT, IN AT LEAST TEN-POINT
14 TYPE IF THE CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF THE
15 CONTRACT IS TYPED:

16 **"NOTICE OF CANCELLATION**

17 _____ (ENTER DATE
18 CONTRACT SIGNED). YOU MAY CANCEL THIS CONTRACT FOR
19 THE SALE OF YOUR HOUSE, WITHOUT ANY PENALTY OR
20 OBLIGATION, AT ANY TIME BEFORE
21 _____ (ENTER DATE AND TIME OF
22 DAY). TO CANCEL THIS TRANSACTION, PERSONALLY
23 DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF
24 CANCELLATION IN THE UNITED STATES MAIL, POSTAGE
25 PREPAID, TO _____, (NAME
26 OF PURCHASER) AT _____ (STREET
27 ADDRESS OF PURCHASER'S PLACE OF BUSINESS) NOT

1 LATER THAN _____ (ENTER DATE
2 AND TIME OF DAY). I HEREBY CANCEL THIS TRANSACTION
3 _____ (DATE)
4 _____ (SELLER'S
5 SIGNATURE)"

6 (3) THE EQUITY PURCHASER SHALL PROVIDE THE EQUITY SELLER
7 WITH A COPY OF THE CONTRACT AND THE ATTACHED NOTICE OF
8 CANCELLATION.

9 (4) UNTIL THE EQUITY PURCHASER HAS COMPLIED WITH THIS
10 SECTION, THE EQUITY SELLER MAY CANCEL THE CONTRACT.

11 **6-1-1115. Options - reconveyances.** (1) A TRANSACTION IN
12 WHICH AN EQUITY SELLER PURPORTS TO GRANT A RESIDENCE IN
13 FORECLOSURE TO AN EQUITY PURCHASER BY AN INSTRUMENT THAT
14 APPEARS TO BE AN ABSOLUTE CONVEYANCE AND RESERVES TO THE EQUITY
15 SELLER OR IS GIVEN BY THE EQUITY PURCHASER AN OPTION TO
16 REPURCHASE CREATES A PRESUMPTION AFFECTING THE BURDEN OF PROOF.
17 THE PRESUMPTION MAY BE OVERCOME BY CLEAR AND CONVINCING
18 EVIDENCE TO THE CONTRARY THAT THE TRANSACTION IS A LOAN
19 TRANSACTION AND THE PURPORTED ABSOLUTE CONVEYANCE IS A
20 MORTGAGE.

21 (2) WHENEVER AN EQUITY PURCHASER PURPORTS TO HOLD TITLE
22 AS A RESULT OF A TRANSACTION IN WHICH THE EQUITY SELLER GRANTS
23 THE RESIDENCE IN FORECLOSURE BY AN INSTRUMENT THAT PURPORTS TO
24 BE AN ABSOLUTE CONVEYANCE AND RESERVES TO THE EQUITY SELLER AN
25 OPTION TO REPURCHASE SUCH RESIDENCE, THE EQUITY PURCHASER SHALL
26 NOT CAUSE ANY LIEN OR ENCUMBRANCE TO BE PLACED ON SUCH PROPERTY
27 OR GRANT ANY INTEREST IN SUCH PROPERTY TO ANOTHER PERSON

1 WITHOUT THE PRIOR WRITTEN CONSENT OF THE EQUITY SELLER, GIVEN BY
2 INSTRUMENT SEPARATE FROM THE CONTRACT AFTER EXPIRATION OF THE
3 FIVE-DAY RIGHT OF RESCISSION PROVIDED IN SECTION 6-1-1113.

4 **6-1-1116. Waiver of rights - void.** (1) A PROVISION IN A
5 CONTRACT BETWEEN AN EQUITY PURCHASER AND EQUITY SELLER IS VOID
6 AS AGAINST PUBLIC POLICY IF IT ATTEMPTS OR PURPORTS TO:

7 (a) WAIVE ANY OF THE RIGHTS SPECIFIED IN THIS SUBPART 3 OR
8 THE RIGHT TO A JURY TRIAL;

9 (b) CONSENT TO JURISDICTION FOR LITIGATION OR CHOICE OF LAW
10 IN A STATE OTHER THAN COLORADO;

11 (c) CONSENT TO VENUE IN A COUNTY OTHER THAN THE COUNTY IN
12 WHICH THE PROPERTY IS LOCATED; OR

13 (d) IMPOSE ANY COSTS OR FEES GREATER THAN THE ACTUAL COSTS
14 AND FEES.

15 **6-1-1117. Prohibited conduct.** (1) THE CONTRACT PROVISIONS
16 REQUIRED BY SECTIONS 6-1-1111 TO 6-1-1114 SHALL BE PROVIDED AND
17 COMPLETED IN CONFORMITY WITH SUCH SECTIONS BY THE EQUITY
18 PURCHASER.

19 (2) UNTIL THE TIME WITHIN WHICH THE EQUITY SELLER MAY
20 CANCEL THE TRANSACTION HAS FULLY ELAPSED, THE EQUITY PURCHASER
21 SHALL NOT DO ANY OF THE FOLLOWING:

22 (a) ACCEPT FROM AN EQUITY SELLER AN EXECUTION OF, OR
23 INDUCE AN EQUITY SELLER TO EXECUTE, AN INSTRUMENT OF CONVEYANCE
24 OF ANY INTEREST IN THE RESIDENCE IN FORECLOSURE;

25 (b) RECORD WITH THE COUNTY RECORDER ANY DOCUMENT,
26 INCLUDING, BUT NOT LIMITED TO, THE CONTRACT OR ANY LEASE, LIEN, OR
27 INSTRUMENT OF CONVEYANCE, THAT HAS BEEN SIGNED BY THE EQUITY

1 SELLER;

2 (c) TRANSFER OR ENCUMBER OR PURPORT TO TRANSFER OR
3 ENCUMBER AN INTEREST IN THE RESIDENCE IN FORECLOSURE TO A THIRD
4 PARTY; OR

5 (d) PAY THE EQUITY SELLER ANY CONSIDERATION.

6 (3) WITHIN TEN DAYS FOLLOWING RECEIPT OF A NOTICE OF
7 CANCELLATION GIVEN IN ACCORDANCE WITH SECTIONS 6-1-1113 AND
8 6-1-1114, THE EQUITY PURCHASER SHALL RETURN WITHOUT CONDITION
9 THE ORIGINAL CONTRACT AND ANY OTHER DOCUMENTS SIGNED BY THE
10 EQUITY SELLER.

11 (4) AN EQUITY PURCHASER SHALL MAKE NO UNTRUE OR
12 MISLEADING STATEMENTS REGARDING THE VALUE OF THE RESIDENCE IN
13 FORECLOSURE, THE AMOUNT OF PROCEEDS THE EQUITY SELLER WILL
14 RECEIVE AFTER A FORECLOSURE SALE, ANY CONTRACT TERM, THE EQUITY
15 SELLER'S RIGHTS OR OBLIGATIONS INCIDENT TO OR ARISING OUT OF THE
16 SALE TRANSACTION, THE NATURE OF ANY DOCUMENT THAT THE EQUITY
17 PURCHASER INDUCES THE EQUITY SELLER TO SIGN, OR ANY OTHER UNTRUE
18 OR MISLEADING STATEMENT CONCERNING THE SALE OF THE RESIDENCE IN
19 FORECLOSURE TO THE EQUITY PURCHASER.

20 **6-1-1118. Criminal penalties.** A PERSON WHO VIOLATES SECTION
21 6-1-1117 (2), (3), OR (4) IS GUILTY OF A MISDEMEANOR, AS DEFINED IN
22 SECTION 18-1.3-504, C.R.S., AND SHALL BE SUBJECT TO IMPRISONMENT IN
23 COUNTY JAIL FOR UP TO ONE YEAR, A FINE OF UP TO TWENTY-FIVE
24 THOUSAND DOLLARS, OR BOTH.

25 **6-1-1119. Unconscionability.** (1) AN EQUITY PURCHASER OR
26 ASSOCIATE SHALL NOT FACILITATE OR ENGAGE IN ANY TRANSACTION THAT
27 IS UNCONSCIONABLE GIVEN THE TERMS AND CIRCUMSTANCES OF THE

1 TRANSACTION.

2 (2) (a) IF A COURT, AS A MATTER OF LAW, FINDS AN EQUITY
3 PURCHASER CONTRACT OR ANY CLAUSE OF SUCH CONTRACT TO HAVE BEEN
4 UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY REFUSE TO
5 ENFORCE THE CONTRACT, ENFORCE THE REMAINDER OF THE CONTRACT
6 WITHOUT THE UNCONSCIONABLE CLAUSE, OR SO LIMIT THE APPLICATION
7 OF ANY UNCONSCIONABLE CLAUSE AS TO AVOID AN UNCONSCIONABLE
8 RESULT.

9 (b) WHEN IT IS CLAIMED OR APPEARS TO THE COURT THAT THE
10 CONTRACT OR ANY CLAUSE THEREOF MAY BE UNCONSCIONABLE, THE
11 PARTIES SHALL BE AFFORDED A REASONABLE OPPORTUNITY TO PRESENT
12 EVIDENCE AS TO ITS COMMERCIAL SETTING, PURPOSE, AND EFFECT, TO AID
13 THE COURT IN MAKING THE DETERMINATION.

14 (c) IN ORDER TO SUPPORT A FINDING OF UNCONSCIONABILITY,
15 THERE MUST BE EVIDENCE OF SOME BAD FAITH OVERREACHING ON THE
16 PART OF THE EQUITY PURCHASER OR ASSOCIATE SUCH AS THAT WHICH
17 RESULTS FROM AN UNREASONABLE INEQUALITY OF BARGAINING POWER OR
18 UNDER OTHER CIRCUMSTANCES IN WHICH THERE IS AN ABSENCE OF
19 MEANINGFUL CHOICE ON THE PART OF ONE OF THE PARTIES, TOGETHER
20 WITH CONTRACT TERMS THAT ARE, UNDER STANDARD INDUSTRY
21 PRACTICES, UNREASONABLY FAVORABLE TO THE EQUITY PURCHASER OR
22 ASSOCIATE.

23 **6-1-1120. Language.** ANY CONTRACT, RENTAL AGREEMENT,
24 LEASE, OPTION OR RIGHT TO REPURCHASE, AND ANY NOTICE,
25 CONVEYANCE, LIEN, ENCUMBRANCE, CONSENT, OR OTHER DOCUMENT OR
26 INSTRUMENT SIGNED BY AN EQUITY SELLER, SHALL BE WRITTEN IN
27 ENGLISH AND SHALL BE ACCOMPANIED BY A WRITTEN TRANSLATION FROM

1 ENGLISH INTO ANY OTHER LANGUAGE PRINCIPALLY SPOKEN BY THE
2 EQUITY SELLER, CERTIFIED BY THE PERSON MAKING THE TRANSLATION AS
3 A TRUE AND CORRECT TRANSLATION OF THE ENGLISH VERSION. THE
4 TRANSLATED VERSION SHALL BE PRESUMED TO HAVE EQUAL STATUS AND
5 CREDIBILITY AS THE ENGLISH VERSION.

6 **SECTION 2.** 6-1-105 (1), Colorado Revised Statutes, is amended
7 BY THE ADDITION OF A NEW PARAGRAPH to read:

8 **6-1-105. Deceptive trade practices.** (1) A person engages in a
9 deceptive trade practice when, in the course of such person's business,
10 vocation, or occupation, such person:

11 (xx) VIOLATES ANY PROVISION OF PART 11 OF THIS ARTICLE.

12 **SECTION 3. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.