

1 of a notice of default or the conduct of a foreclosure sale; or

2 (8) Save the owner's residence from foreclosure.

3 (b) A foreclosure consultant does not include any of the following:

4 (1) A person licensed to practice law in this state when the person renders service in the

5 course of his or her practice as an attorney-at-law;

6 (2) A person licensed as a credit counselor under chapter 19-14.7, when the person is

7 acting as a credit counselor in accordance with the chapter;

8 (3) A person licensed as a real estate broker or salesperson under chapter 5-20.5 when the

9 person engages in acts whose performance requires licensure under that chapter;

10 (4) A person licensed as an accountant under chapter 5-3.1 when the person is acting in

11 any capacity for which the person is licensed under those provisions;

12 (5) A person or the person's authorized agent acting under the express authority or written

13 approval of the department of housing and urban development or other department or agency of

14 the United States or this state to provide services;

15 (6) A person who holds or is owed an obligation secured by a lien on any residence in

16 foreclosure when the person performs services in connection with this obligation or lien of the

17 obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

18 (7) Any person or entity doing business under any law of this state, or of the United

19 States relating banks, trust companies, savings and loan associations, industrial loan and thrift

20 companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a

21 United States Department of Housing and Urban Development approved mortgagee and any

22 subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or

23 entities while engaged in the business of these persons or entities;

24 (8) A person licensed as a residential mortgage originator or servicer pursuant to chapter

25 19-14, when acting under the authority of that license or a foreclosure purchaser as defined in

26 section 5-78-10;

27 (9) A nonprofit agency or organization that offers counseling or advice to an owner of a

28 home in foreclosure or loan default if they do not contract for services with for-profit lenders or

29 foreclosure purchasers; and

30 (10) A judgment creditor of the owner, to the extent that the judgment creditor's claim

31 accrued prior to the personal service of the foreclosure notice required by section 34-27-4, but

32 excluding a person who purchased the claim after such personal service.

33 (c) "Foreclosure reconveyance" means a transaction involving:

34 (1) The transfer of title to real property by a foreclosed homeowner during a foreclosure

proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following activities:

(1) Debt, budget or financial counseling of any type;

(2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(3) Contacting creditors on behalf of an owner of a residence in foreclosure;

(4) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate his or her obligation pursuant to section 34-23-3;

(5) Arranging or attempting to arrange for any delay or postponements of the time of sale of the residence in foreclosure;

(6) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or

(7) Giving any advise, explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien of the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage;

(f) "Residence in foreclosure" means residential real property consisting of one to four (4) 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 pendency of foreclosure, pursuant to section 34-27-4, or against which a summons and complaint has been served under section 34-27-1.

(g) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.

(h) "Contract" means any agreement, or any term in any agreement, between a

1 foreclosure consultant and an owner for the rendition of any services as defined in paragraph (e).

2 **5-78-2. Rescission of foreclosure consultant contract.** -- (a) In addition to any other
3 right under law to rescind a contract, an owner has the right to cancel such a contract until
4 midnight of the third (3rd) business day after the day on which the owner signs a contract that
5 complies with section 5-78-3.

6 (b) Cancellation occurs when the owner gives written notice of cancellation to the
7 foreclosure consultant at the address specified in the contract.

8 (c) Notice of cancellation, if given by mail, is effective when deposited in the mail
9 properly addressed with postage prepaid.

10 (d) Notice of cancellation given by the owner need not take the particular form as
11 provided with the contract and, however expressed, is effective if it indicates the intention of the
12 owner not to be bound by the contract.

13 **5-78-3. Contract.** -- (a) Every contract must be in writing and must fully disclose the
14 exact nature of the foreclosure consultant's services and the total amount and terms of
15 compensation.

16 (b) The following notice, printed in at least 14-point boldface type and completed with
17 the name of the foreclosure consultant, must be printed immediately above the statement required
18 by paragraph (c):

19 "NOTICE REQUIRED BY RHODE ISLAND LAW

20 (Name or anyone working for him or her CANNOT:

21 (1) Take any money from you or ask you for money until(Name) has completely
22 finished doing everything he or she said he or she would do; and

23 (2) Ask you to sign or have you sign any lien, mortgage or deed."

24 (c) The contract must be written in the same language as principally used by the
25 foreclosure consultant to describe his or her services or to negotiate the contract, must be dated
26 and signed by the owner, and must contain in immediate proximity to the space reserved for the
27 owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as
28 follows:

29 "You, the owner, may cancel this transaction at any time prior to midnight of the third
30 (3rd) business day after the date of this transaction. See the attached notice of cancellation form
31 for an explanation of this right."

32 (d) The contract must contain on the first (1st) page, in a type size no smaller than that
33 generally used in the body of the document, each of the following:

34 (1) The name and address of the foreclosure consultant to which the notice of

1 cancellation is to be mailed; and

2 (2) The date the owner signed the contract.

3 (e) The contract must be accompanied by a completed form in duplicate, captioned

4 "notice of cancellation," which must be attached to the contract, must be easily detachable, and

5 must contain in at least 10-point type the following statement written in the same language as

6 used in the contract:

7 "NOTICE OF CANCELLATION

8(Enter date of transaction)

9 You may cancel this transaction, without any penalty or obligation, until midnight of the

10 third (3rd) business day from the above date.

11 To cancel this transaction, mail or deliver a signed and dated copy of this cancellation

12 notice, or any other written notice to(Name of foreclosure consultant) at(Address

13 of foreclosure consultant's place of business) NOT LATER THAN MIDNIGHT OF

14(Date)

15 I hereby cancel this transaction(Date)

16(Owner's signature)"

17 (f) The foreclosure consultant shall provide the owner with a copy of the contract and the

18 attached notice of cancellation immediately upon execution of the contract.

19 (g) The three (3) business days during which the owner may cancel the contract shall not

20 begin to run until the foreclosure consultant has complied with this section.

21 **5-78-4. Violations.** – (a) It is a violation for a foreclosure consultant to:

22 (1) Claim, demand, charge, collect, or receive any compensation until after the

23 foreclosure consultant has fully performed each and every service the foreclosure consultant

24 contracted to perform or represented he or she would perform;

25 (2) Claim, demand, charge, collect, or receive any fee, interest, or any other

26 compensation for any reason which exceeds eight percent (8%) per annum of the amount of any

27 loan which the foreclosure consultant may make to the owner;

28 (3) Take any wage assignment, any lien on any type of real or personal property, or other

29 security to secure the payment of compensation. Any such security is void and unenforceable;

30 (4) Receive any consideration from any third-party in connection with services rendered

31 to an owner unless the consideration is first fully disclosed to the owner;

32 (5) Acquire any interest, directly, or indirectly, or by means of a subsidiary or affiliate in

33 a residence in foreclosure from an owner with whom the foreclosure consultant has contracted;

34 (6) Take any power of attorney from an owner for any purpose, except to inspect

1 documents as provided by law; or

2 (7) Induce or attempt to induce any owner to enter a contract which does not comply in
3 all respects with section 5-78-3.

4 **5-78-5. Waiver not allowed.** – Any waiver by an owner of the provisions of sections 5-
5 78-1 through 5-78-9 is void and unenforceable as contrary to public policy. Any attempt by a
6 foreclosure consultant to induce an owner to waive the owner's rights is a violation of sections 5-
7 78-1 through 5-78-9.

8 **5-78-6. Remedies.** – (a) Any violation of sections 5-78-1 through 5-78-9 is considered to
9 be a violation of section 6-13.1-2, and all remedies of section 6-13.1-5.2 are available for such an
10 action. A private cause of action under section 6-13.1-5.2 by a foreclosed homeowner is in the
11 public interest. An owner may bring an action against a foreclosure consultant for any violation of
12 sections 5-78-1 through 5-78-9. Any judgment against the mortgage foreclosure consultant actual
13 damages, reasonable attorney fees and costs, and appropriate equitable relief.

14 (b) The court may award punitive damages up to one and one half (1½) times the
15 compensation charged by the foreclosure consultant if the court finds that the foreclosure
16 consultant violated to provisions of subsections 5-78-4 (1), (2) or (4), and the foreclosure
17 consultant's conduct was in bad faith.

18 (c) The rights and remedies provided in paragraph (a) are cumulative to, and not a
19 limitation of, any other rights and remedies provided by law.

20 (d) Any action brought pursuant to this section must be commenced within four (4) years
21 from the date of the alleged violation.

22 (e) Notwithstanding any other provision of this section, no action may be brought on the
23 basis of a violation of section 5-78-1 through 5-78-9, except by an owner against whom the
24 violation was committed or by the department of attorney general.

25 **5-78-7. Penalty.** -- Any person who commits any violation described in section 5-78-4
26 may, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned for
27 not more than one year, or both. Prosecution or conviction for any violation described in section
28 5-78-4 will not bar prosecution or conviction for any other offenses. These penalties are
29 cumulative to any other remedies or penalties provided by law.

30 **5-78-8. Provisions severable.** -- If any provision of sections 5-78-1 through 5-48-9 or the
31 application of any of these provisions to any person or circumstance is held to be unconstitutional
32 and void, the remainder of sections 5-78-1 through 5-78-9 remains valid.

33 **5-78-9. Liability.** -- (a) Any provision in a contract that attempts or purports to require
34 arbitration of any dispute arising under sections 5-78-1 through 5-78-9 is void at the option of the

owner.

SECTION 2. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS" is hereby amended by adding thereto the following chapter:

CHAPTER 79

MORTGAGE FORECLOSURE PURCHASERS

5-79-1. Definitions. -- As used for sections 5-79-1 through 5-79-9:

(a) "Foreclosed homeowner" means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure.

(b) "Foreclosure conveyance" means a transaction involving:

(1) The transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(c) "Foreclosure purchaser" means a person that has acted as the acquirer in more than four (4) foreclosure reconveyances during any twenty-four (24) month period. Foreclosure purchaser also includes a person that has acted in joint venture or joint enterprise with one or more acquirers in more than four (4) foreclosure reconveyances during any twenty-four (24) month period. A federal or state chartered bank, savings bank, thrift, or credit union is not a foreclosure purchaser.

(d) "Resale" means a bona fide market sale of the property subject to the foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third-party.

(e) "Resale price" means the gross sale price of the property on resale.

5-79-2. Contract requirement; form and language. -- A foreclosure purchaser shall enter into every foreclosure reconveyance in the form of a written contract. Every contract must be written in letters of a size equal to at least 12-point boldface type, in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence in foreclosure and must be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of

1 the resident in foreclosure.

2 **5-79-3. Contract terms. --** (a) Every contract required by section 5-79-2 must contain
3 the entire agreement of the parties and must include the following terms:

4 (1) The name, business address, and the telephone number of the foreclosure purchaser;

5 (2) The address of the residence in foreclosure;

6 (3) The total consideration to be given by the foreclosure purchaser in connection with or
7 incident to the sale;

8 (4) A complete description of the terms of payment or other consideration including, but
9 not limited to, any services of any nature that the foreclosure purchaser represents he or she will
10 perform for the foreclosed homeowner before or after the sale;

11 (5) The time at which possession is to be transferred to the foreclosure purchaser;

12 (6) A complete description of the terms of any related agreement designed to allow the
13 foreclosed homeowner to remain in the home, such as a rental agreement, repurchase agreement,
14 contract for deed, or lease with option to buy;

15 (7) A notice of cancellation as provided in subsection 5-79-5(b); and

16 (8) The following notice in at least 14-point boldface type, if the contract is printed or in
17 capital letters if the contract is typed, and completed with the name of the foreclosure purchaser,
18 immediately above the statement required by subsection 5-79-5(a):

19 "NOTICE REQUIRED BY RHODE ISLAND LAW

20 Until your right to cancel this contract has ended,(Name)

21 or anyone working for(Name) CANNOT ask you to sign

22 or have you sign any deed or any other document."

23 The contract required by this section survives delivery of any instrument of conveyance
24 of the residence in foreclosure, and has no effect on persons other than the parties to the contract.

25 **5-79-4. Contract cancellation. –** (a) In addition to any other right of rescission, the
26 foreclosed homeowner has the right to cancel any contract with a foreclosure purchaser until
27 midnight of the fifth (5th) business day following the day on which the foreclosed homeowner
28 signs a contract that complies with sections 5-79-1 through 5-79-6 or until 8:00 a.m. on the last
29 day of the period during which the foreclosed homeowner has a right of redemption, whichever
30 occurs first.

31 (b) Cancellation occurs when the foreclosed homeowner delivers, by any means, written
32 notice of cancellation to addresses specified in the contract.

33 (c) A notice of cancellation given by the foreclosed homeowner need not take the
34 particular form as provided with the contract.

1 (d) Within ten (10) days following the receipt of a notice of cancellation given in
2 accordance with this section, the foreclosure purchaser shall return without condition any original
3 contract and any other documents signed by the foreclosed homeowner.

4 **5-79-5. Notice of cancellation.** – (a) The contract must contain in immediate proximity
5 to the space reserved for the foreclosed homeowner's signature a conspicuous statement in a size
6 equal to at least 14-point boldface type, if the contract is printed, or in capital letters, if the
7 contract is typed, as follows:

8 "You may cancel this contract for the sale of your house without any penalty or
9 obligation at anytime before(Date and time of day) See the attached notice of cancellation
10 form for an explanation of this right."

11 The foreclosure purchaser shall accurately enter the date and time of day on which the
12 cancellation right ends.

13 (b) The contract must be accompanied by a completed form in duplicate, captioned
14 "notice of cancellation" in a size equal to a 12-point boldface type if the contract is printed, or in
15 capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser
16 shall enter the date on which the foreclosed homeowner executes any contract. This form must be
17 attached to the contract, must be easily detachable, and must contain in type of at least 10-points,
18 if the contract is printed or in capital letters if the contract is typed, the following statement
19 written in the same language as used in the contract:

20 "NOTICE OF CANCELLATION

21 (Enter date contract signed)

22 You may cancel this contract for the sale of your house, without any penalty or
23 obligation, at any time before.....(enter date and time of day)

24 To cancel this transaction, personally deliver a signed and dated copy of this cancellation
25 notice to.....(Name of purchaser) at.....(Street address of purchaser's place of business)

26 NOT LATER THAN (Enter date and time of day_ I hereby cancel this transaction.....(Date)

27 (Seller's signature)"

28 (c) The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the
29 contract and the attached notice of cancellation at the time the contract is executed by all parties.

30 (d) The five (5) business days during which the foreclosed homeowner may cancel the
31 contract must not begin to run until all parties to the contract have executed the contract and the
32 foreclosure purchaser has complied with this section.

33 **5-79-6. Waiver. --** Any waiver of the provisions of sections 5-79-1 through 5-79-9 is
34 void and unenforceable as contrary to public policy except a consumer may waive the five (5) day

1 right to cancel provided in section 5-79-4 if the property is subject to a foreclosure sale within the
2 five (5) business days, and the foreclosed homeowner agrees to waive his or her right to cancel in
3 a handwritten statement signed by all parties holding title to the foreclosed property.

4 **5-79-7. Arbitration. --** (a) Any provision in a contract that attempts or purports to require
5 arbitration of any dispute arising under sections 5-79-1 through 5-79-9 is void at the option of the
6 owner.

7 **5-79-8. Prohibited practices. --** A foreclosure purchaser shall not:

8 (a) Enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed
9 homeowner unless:

10 (1) The foreclosure purchaser verifies and can demonstrate that the foreclosed
11 homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to
12 the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also
13 included the reasonable ability to make the lease payments and purchase the property within the
14 term of the option to purchase. There is a rebuttable presumption that a homeowner is reasonably
15 able to pay for the subsequent conveyance if the owner's payments for primary housing expenses
16 and regular principal and interest payments on other personal debt, on a monthly basis, do not
17 exceed sixty percent (60%) of the owner's monthly gross income. For the purposes of this section,
18 "primary housing expenses" means the sum of payments for regular principal, interest, rent,
19 utilities, hazard insurance, real estate taxes, and association dues. There is a rebuttable
20 presumption that the foreclosure purchaser has not verified reasonable payment ability if the
21 foreclosure purchaser has not obtained documents other than a statement by the foreclosed
22 homeowner of assets, liabilities, and income;

23 (2) The foreclosure purchaser and the foreclosed homeowner complete a closing for any
24 foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a
25 foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to
26 complete final documents incident to the sale of the real property or creation of a mortgage on the
27 real property conducted by a closing agent who is not employed by or an affiliate of the
28 foreclosure purchaser;

29 (3) The foreclosure purchaser obtains the written consent of the foreclosed homeowner to
30 a grant by the foreclosure purchaser of any interest in the property during such times as the
31 foreclosed homeowner maintains any interest in the property; and

32 (4) The foreclosure purchaser complies with the requirements of the federal home
33 Ownership Equity Protection Act, United States Code, title 15, section 1639, or its implementing
34 regulation, Code of Federal Regulations, title 12, sections 226.31 to 226.34, for any foreclosure

1 reconveyance in which foreclosed homeowner obtains a vendee interest in a contract for deed;
2 (b) Fail to either;
3 (1) Ensure that title to the subject dwelling has been reconveyed to the foreclosed
4 homeowner; or
5 (2) Make a payment to the foreclosed homeowner such that the foreclosed homeowner
6 has received consideration in an amount of at least eighty two percent (82%) of the fair market
7 value of the property within one hundred fifty (150) days of either the eviction or voluntary
8 relinquishment of possession of the dwelling by the foreclosed homeowner. The foreclosure
9 purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed
10 accounting of the reasons for failure to make a payment, including providing written
11 documentation of expenses, within this one hundred fifty (150) day period. The accounting shall
12 be on a form prescribed by the department of attorney general, in consultation with the
13 department of business regulation, without being subject to the rulemaking procedures of chapter
14 42-35. For purposes of this provision, the following applies:
15 (i) There is a rebuttable presumption that an appraisal by a person licensed or certified by
16 an agency of the federal government or this state to appraise real estate constitutes the fair market
17 value of the property;
18 (ii) The time for determining the fair market value amount shall be determined in the
19 foreclosure reconveyance contract as either at the time of the execution of the foreclosure
20 reconveyance contract or at resale. If the contract states that the fair market value shall be
21 determined at the time of resale, the fair market value shall be the resale price if it is sold within
22 one hundred twenty (120) days of the eviction or voluntary relinquishment of the property by the
23 foreclosed homeowner. If the contract states that the fair market value shall be determined at the
24 time of resale, and the resale is not completed within one hundred twenty (120) days of the
25 eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair
26 market value shall be determined by an appraisal conducted during this one hundred twenty (120)
27 period and payment, if required, shall be made to the homeowner, but the fair market value shall
28 be recalculated as the resale price, on resale and an additional payment amount, if appropriate
29 based on the resale price, shall be made to the foreclosed homeowner within fifteen (15) days of
30 resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of
31 the reasons for failure to make additional payment, shall be made within fifteen (15) days of
32 resale, including providing written documentation of expenses. The accounting shall be on a form
33 prescribed by the department of attorney general, in consultation with the department of business
34 regulation, without being subject to the rulemaking procedures of chapter 42-35;

1 (iii) "Consideration" shall mean any payment or item of value provided to the foreclosed
2 homeowner, including unpaid rent or contract for deed payments owed by the foreclosed
3 homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable
4 costs paid to third parties necessary to complete the foreclosure reconveyance transaction,
5 payment of money to satisfy a debt or legal obligation of the foreclosed homeowner, or the
6 reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner;

7 (iv) "Consideration" shall not include amounts imputed as a down payment or fee to the
8 foreclosure purchaser, or a person acting in participation with the foreclosure purchaser, incident
9 to a contract for deed, lease, or option to purchase entered into as part of the foreclosure
10 reconveyance, except for reasonable costs paid to third parties necessary to complete the
11 foreclosure reconveyance;

12 (c) Enter into repurchase or lease terms as part of the subsequent conveyance that are
13 unfair or commercially unreasonable, or engage in any other unfair conduct;

14 (d) Represent, directly or indirectly, that:

15 (1) The foreclosure purchaser is acting as an advisor or a consultant, or in any other
16 manner represents that the foreclosure purchaser is acting on behalf of the homeowner;

17 (2) The foreclosure purchaser has certification or licensure that the foreclosure purchaser
18 does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is
19 untrue;

20 (3) The foreclosure purchaser is assisting the foreclosed homeowner to "save the house"
21 or substantially similar phrase; or

22 (4) The foreclosure purchaser is assisting the foreclosed homeowner in preventing a
23 completed foreclosure if the result of the transaction is that the foreclosed homeowner will not
24 complete a redemption of the property;

25 (e) Make any other statements, directly or by implication, or engage in any other conduct
26 that is false, deceptive, or misleading, or that has the likelihood to cause confusion or
27 misunderstanding, including, but not limited to, statements regarding the value of the residence in
28 foreclosure, the amount of proceeds the foreclosed homeowner will receive after a foreclosure
29 sale, any contract term, or the foreclosed homeowner's rights or obligations incident to or arising
30 out of the foreclosure reconveyance; or

31 (f) Do any of the following until the time during which the foreclosed homeowner may
32 cancel the transaction has fully elapsed:

33 (1) Accept from any foreclosed homeowner an execution of, or induce any foreclosed
34 homeowner to execute, any instrument of conveyance of any interest in the residence in

1 foreclosure;

2 (2) Record with the records of land evidence in the city or town where such foreclosed
3 property is located any document, including, but not limited to, any instrument of conveyance,
4 signed by the foreclosed homeowner;

5 (3) Transfer or encumber or purport to transfer or encumber any interest in the residence
6 in foreclosure to any third-party, provided no grant of any interest or encumbrance is defeated or
7 affected as against a bona fide purchaser or encumbrance for value and without notice of a
8 violation of section 5-79-1 through 5-79-9, and knowledge on the part of any such person or
9 entity that the property was "residential real property in foreclosure" does not constitute notice of
10 a violation of sections 5-79-1 through 5-79-9. This section does not abrogate any duty of inquiry
11 which exists as to rights or interest of persons in possession of the residential real property in
12 foreclosure; or

13 (4) Pay the foreclosed homeowner any consideration.

14 **5-79-9. Enforcement. --** (a) Remedies- A violation of sections 5-79-1 through 5-79-8 is
15 considered to be a violation of section 6-13.1-2 and all the remedies of section 6-13.1-5.2 are
16 available for such an action. A private right of action under section 6-13.1-5.2 by a foreclosed
17 homeowner is in the public interest.

18 (b) Exemplary damages- In a private right of action under section 6-13.1-5.2 for a
19 violation of section 5-79-8, the court may award exemplary damages of any amount. In the event
20 the court determines that an award of exemplary damages is appropriate, the amount of
21 exemplary damages awarded shall not be less than one and one half (1 ½) times the foreclosed
22 homeowner's actual damages. Any claim for exemplary damages brought pursuant to this section
23 must be commenced within four (4) years after the date of the alleged violation.

24 (c) Remedies cumulative – The remedies provided in this section are cumulative and do
25 not restrict any remedy that is otherwise available. The provisions of section 5-79-1 through 5-79-
26 9 are not exclusive and are in addition to any other requirements, rights, remedies and penalties
27 provided by law.

28 (d) Criminal penalty – Any foreclosure purchaser who engages in any practice which
29 would operate as a fraud or deceit upon a foreclosed homeowner may, upon conviction, be fined
30 not more than fifty thousand dollars (\$50,000) or imprisoned not more than one year, or both.
31 Prosecution or conviction for any one of the violations does not bar prosecution or conviction for
32 any other offenses.

33 (e) Failure of transaction – Failure of the parties to complete the reconveyance
34 transaction, in the absence of additional misconduct, shall not be subject a foreclosure purchaser

- 1 to the criminal penalties under section 5-78-7 or 5-79-9.
- 2 (f) Limitation – Notwithstanding any other provisions of this section, no action may be
- 3 brought on the basis of a violation of sections 5-79-1 through 5-79-9, except by an owner against
- 4 whom the violation was committed or by the department of attorney general.
- 5 SECTION 3. This act shall take effect upon passage.

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LC02043/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS - MORTGAGE FORECLOSURE
CONSULTANT REGULATION

- 1 This act would regulate the actions of mortgage foreclosure consultants and mortgage
2 foreclosure purchasers.
3 This act would take effect upon passage.

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LC02043/SUB A

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