



Hundredth Legislature - First Session - 2007
Introducer's Statement of Intent
LB 123

Chairperson: Rich Pahls
Committee: Banking, Commerce and Insurance
Date of Hearing: February 12, 2007

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 123 is a bill introduced at the request of the Nebraska Department of Banking and Finance. Its purpose is to adopt the Nebraska Foreclosure Protection Act to provide protection for homeowners against fraudulent activity in connection with foreclosure transactions. The act focuses on regulation of foreclosure consultants and equity purchasers and would provide a criminal penalty for violations.

Section 1 provides that this legislation may be cited as the Nebraska Foreclosure Protection Act.

Section 2 sets forth a statement of legislative intent. The statement finds that homeowners in financial distress are prey to deceptive business practices that will force them from their homes or strip them of the equity in their home; that there is a need to provide homeowners with information about foreclosure consultants and equity purchasers; and that minimum statutory requirements are necessary for contracts between homeowners and foreclosure consultants and equity purchasers. The section provides that the act is to be construed liberally for the protection of homeowners in foreclosure.

Section 3 provides that the definitions found in the succeeding nine sections are to be used in connection with certain terms contained within the proposed new act. The terms defined are as follows:

Section 4 defines “associate” as entities or individuals working in association with foreclosure consultants or equity purchasers.

Section 5 defines “equity purchase contract” as an agreement between a homeowner and an equity purchaser relating to acquisition of title in a personal residence.

Section 6 defines “equity purchaser” as a person who in the course of business or occupation acquires title to a residence in foreclosure. The section provides for a number of exceptions including a person who intends to personally reside in the property; a person who takes a deed in lieu of foreclosure of a consensual lien if the lien is recorded prior to a foreclosure sale; a person who

acquires a deed from a trustee, sheriff, or person appointed in a court-ordered foreclosure sale; a person who takes title as a result of a statutorily-authorized sale or by court judgment; a person who is a relative of the homeowner in foreclosure; or a financial institution, insurer, escrow agent, or any subsidiary, affiliate, employee or agent of those entities.

Section 7 defines “evidence of debt” as any written instrument evidencing a debt or a court-ordered monetary judgment.

Section 8 defines “foreclosure consultant” as a person who does not acquire an interest in or title to a residence in foreclosure, but who solicits a homeowner in foreclosure with an offer to perform any of the following services for compensation: stop or postpone the foreclosure sale; obtain a forbearance from the beneficiary of a lien on the property; assist in exercising a right to cure a default; obtain an extension of the cure period or a waiver of an acceleration clause; obtain a loan or advance of funds; avoid credit impairment; delay or prevent a foreclosure; or obtain excess proceeds following a foreclosure sale.

Excluded from the definition of a foreclosure consultant are attorneys acting within an attorney-client relationship, a holder or servicer of a secured debt, financial institutions, insurers or escrow companies acting in the normal course of business, a maker of a loan that is subject to RESPA or is a junior mortgage or home equity line of credit closed simultaneously with a first mortgage loan, a judgment creditor, a title insurance company or agent, a real estate broker, or a non-profit organization offering counseling to homeowners in default.

Section 9 defines “foreclosure consulting contract” as any agreement between a foreclosure consultant and a homeowner.

Section 10 defines “holder of evidence of debt” as a person in actual possession of an evidence of debt or entitled to enforce the evidence of debt.

Section 11 defines “homeowner” as the owner of a residence in foreclosure, including a vendee under a contract for a deed to a residence.

Section 12 defines “residence in foreclosure” as a residence or dwelling occupied by the owner as a principal residence against which any type of foreclosure action has been filed.

FORECLOSURE CONSULTANT CONTRACTS

Sections 13 to 18, inclusive, provide requirements for foreclosure consultant contracts.

Section 13 requires that all foreclosure consulting contracts be in writing and given to the homeowner at least 24 hours prior to signature. These contracts must disclose contact information, the services to be performed, terms of compensation, and contain the exact language of a notice of consumer rights set forth in subsection (5) of this section. A notice of cancellation form must also be given to the homeowner.

Section 14 sets forth the procedures for an effective notice of cancellation. The section also provides that within sixty days of cancellation all funds paid to the homeowner prior to the consultant's receipt of notice of cancellation must be repaid under the terms of the written agreement with the total interest rate not to exceed 8% per year.

Section 15 sets forth the conditions under which a foreclosure consultant contract is void as against public policy. These include waiver of rights contained in the act, right to a jury trial, consent to jurisdiction outside Nebraska or venue outside the county where the home is located, and agreement to certain costs.

Section 16 prohibits foreclosure consultants from engaging in certain acts in which the consultant unfairly benefits, including receiving compensation before the consultant has performed services, receiving interest greater than a specified amount on a loan, taking wage assignments or liens on property, third party compensation, and acquiring any interest in any property of the homeowner.

Section 17 prohibits unconscionable foreclosure consulting contracts and provides that a contract will not be enforced when there is evidence of unreasonable inequality of bargaining power or terms that unreasonably favor the foreclosure consultant or associate.

Section 18 requires that foreclosure consulting contracts be written in English and that a true written translation of the contract be provided in the language principally spoken by the homeowner.

EQUITY PURCHASE CONTRACTS

Sections 19 through 27, inclusive, provide requirements for equity purchase contracts.

Section 19 requires equity purchase contracts to be in writing, in a certain size type and entered into prior to the execution of any instrument relating to transfer or encumbrance of the residence in foreclosure.

Section 20 sets forth specific provisions that must be contained in equity purchase contracts. These include contact information, disclosure of the obligations of the homeowner that will be assumed by the purchaser, consideration, date of possession, terms of any rental arrangement, and rights to repurchase. These contracts must include a specific notice of cancellation.

Section 21 provides that a homeowner has the right to cancel the equity purchase contract three business days following the signing or until noon on the day before the foreclosure sale, whichever is earlier, and prescribes when such cancellation occurs.

Section 22 requires that the cancellation notice follow a prescribed format and contain specific language intended to fully inform the homeowner of the right of cancellation and the time by which the right must be exercised.

Section 23 describes the conditions that permit the homeowner an option to repurchase the residence in foreclosure, including a thirty-day right to cure any default, a requirement that payments

and expenses do not exceed 60% of the homeowner's monthly gross income, and a standard for a repurchase price.

Section 24 sets forth the conditions under which an equity purchase contract is void as against public policy. These mirror the conditions set forth in section 15 relating to foreclosure consulting contracts.

Section 25 sets forth acts prohibited to the equity purchaser. These include acquiring, recording, or transferring an interest in the residence in foreclosure prior to the expiration of the 3-day rescission period, and making misleading statements concerning the value or sale of the residence in foreclosure. Section 25 also provides that within ten days following receipt of notice of cancellation, all documents signed by home owner must be returned.

Section 26 prohibits unconscionable equity purchase contracts. These follow the standards set forth in section 17 for foreclosure consulting contracts.

Section 27 mirrors section 18 by requiring that these contracts be written in English and that a true written translation of the contract be provided in the language principally spoken by the homeowner.

Sections 28 and 29 are applicable to both foreclosure consulting contracts and equity purchase contracts. Section 28 provides that any violation of the Nebraska Foreclosure Protection Act is a Class IV felony, while section 29 provides that violation of the Act will be a deceptive trade practice under the Nebraska Uniform Deceptive Trade Practices Act, which is enforced by the Nebraska Attorney General's Office.

Principal Introducer:

Rich Pahls, Chairperson
Committee on Banking, Commerce and Insurance