

# **Guidelines for Identifying Mortgage and Foreclosure Fraud**

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The Colorado Foreclosure Protection Act was signed into law in 2006 to protect homeowners in financial distress from a variety of deceptive practices designed to dispossess them or strip the equity from their homes. The following is a brief summary of the law, to help identify when a case might need to be referred to a law enforcement agency.

Pertinent Definitions:

## **Equity Purchaser**

A person who, in the course of that person's business, acquired title to a residence in foreclosure. The term excludes a buyer who intends to live in the property, a lien holder in a demand for sale procedure, a person who obtains a deed from the Public Trustee or Sheriff as a result of a foreclosure sale, and other persons with a legitimate right to the property.

## **Foreclosure Consultant**

A person who does not take title to the residence in foreclosure, but solicits a homeowner to perform a service, for a fee, that will stop a foreclosure sale; assists the homeowner in a right to cure; obtains an extension on a right to cure; assists the homeowner in obtaining a loan or advance of funds; mitigates credit issues as a result of the foreclosure, etc.

The term "foreclosure consultant" does not include a realtor, attorney, lien holder, financial institution, title insurance company, or a non-profit housing counselor.

## **Foreclosure Consulting Contract**

The new law requires the following: · A foreclosure consulting contract shall be in writing and be provided to the homeowner for review at least 24 hours before it is signed by the homeowner. · The contract must be printed in at least 12-point type and include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed. · The contract must include the date the homeowner signed the contract. · The contract must fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate. · A foreclosure consulting contract must be dated and signed, each page initialed, by each homeowner of the residence in foreclosure. The signatures of the homeowners must be notarized and the law says the notary

must "acknowledge" the foreclosure consultant. - The foreclosure contract shall contain the following notice in at least 14-point type:

**Notice Required by Colorado Law**

\_\_\_\_\_(NAME) OR (HIS/HER/ITS) ASSOCIATE CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DOCUMENT THAT TRANSFERS ANY INTEREST IN YOUR HOME OR PROPERTY TO (HIM/HER/IT) OR (HIS/HER/ITS) ASSOCIATE.

\_\_\_\_\_(NAME) OR (HIS/HER/ITS) ASSOCIATE CANNOT GUARANTEE YOU THAT THEY WILL BE ABLE TO REFINANCE YOUR HOME OR ARRANGE FOR YOU TO KEEP YOUR HOME. YOU MAY, AT ANY TIME, CANCEL THIS CONTRACT, WITHOUT PENALTY OF ANY KIND.

IF YOU WANT TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE, INDICATING YOUR INTENT TO CANCEL TO \_\_\_\_\_(NAME AND ADDRESS OF FORECLOSURE CONSULTANT) AT \_\_\_\_\_(ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE AND ELECTRONIC MAIL ADDRESS.)

AS PART OF ANY CANCELLATION, YOU (THE HOMEOWNER) MUST REPAY ANY MONEY ACTUALLY SPENT ON YOUR BEHALF BY \_\_\_\_\_(NAME OF FORECLOSURE CONSULTANT) PRIOR TO RECEIPT OF THIS NOTICE AND AS A RESULT OF THIS AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH INTEREST AT THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE PLUS TWO PERCENTAGE POINTS, WITH THE TOTAL INTEREST RATE NOT TO EXCEED EIGHT PERCENT PER YEAR.

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

A completed form, in duplicate, captioned "Notice of Cancellation" shall accompany the foreclosure consulting contract and be provided by the foreclosure consultant at the time the contract is signed:

NOTICE OF CANCELLATION  
(DATE OF CONTRACT)

TO: (NAME OF FORECLOSURE CONSULTANT)  
(ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE AND ELECTRONIC MAIL)

I HEREBY CANCEL THIS CONTRACT.

\_\_\_\_\_ (DATE)

\_\_\_\_\_ (HOME OWNER'S SIGNATURE)

The law states that a homeowner may cancel the contract at any time by mail, fax, or e-mail but we recommend certified mail, so the consumer has proof of the cancellation. The right to cancel cannot be waived.

If the contract is cancelled, the home owner is required to repay all funds paid to the foreclosure consultant, plus interest at the prime rate plus 2%, not to exceed 8% per year, from the date of the expenditure until the date repaid.

### **Prohibited Acts**

Any person who violates any of the following prohibited acts may be guilty of a misdemeanor as per C.R.S. 6-1-1108.

#### **A foreclosure consultant may not:**

- Receive any compensation until they have performed each and every service they contract to perform or represented they would perform.
- Receive or charge for any interest for a loan made to the homeowner for an amount that exceeds the prime rate plus 2%.
- Take a wage or lien or other security to secure payment.
- Receive any consideration from a third party unless it is fully disclosed in writing to the homeowner.
- Acquire any interest in the property of the homeowner.
- Obtain a power of attorney from a homeowner for any purpose other than to inspect documents.
- Attempt to induce a homeowner to enter into a contract that does not comply with the law.

**A foreclosure consulting contract and all notices of cancellation shall be written in English and be accompanied by a translation into any other language principally spoken by the homeowner.** The translation must be certified by the person making the translation as a true and correct version of the English version.

**Requirements of Equity Purchasers**  
(C.R.S. 6-1-11111 for complete details)

Every contract must be in at least 12-point type; completed, signed and dated by the homeowner and equity purchaser prior to any property conveyance or encumbrance of the property.

The contract must have the entire agreement and include the following:

- The name, business address and phone number of the equity purchaser.
- The street address and full legal description of the residence in foreclosure.
- Clear disclosure of financial or legal obligations to be assumed by the equity purchaser.
- The total amount to be paid by the equity purchaser.
- The terms of payment, including any services the equity purchaser will perform.
- The date and time when possession of the residence will be transferred to the equity purchaser.
- The terms of any rental agreement or lease.
- The specifications of any option or right to repurchase.
- A notice of cancellation, including the following:

#### **NOTICE REQUIRED BY COLORADO 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.

YOU MAY CANCEL THIS CONTRACT FOR A THE SALE OF YOUR HOUSE WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME BEFORE \_\_\_\_\_(DATE AND TIME OD DAY). SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

In addition to any right of rescission, the homeowner has the right to cancel a contract until midnight of the third business day following the day on which the contract (written in compliance with the law) was signed by the homeowner, or until noon on the day before the foreclosure sale, whichever occurs first.

Cancellation must be by mail and this office recommends certified or registered mail so proof can be maintained by the homeowner.

The cancellation notice must be in duplicate and attached to the contract, specifying the date by which the contract must be cancelled, and the date on which the contract was signed. The homeowner must get an accurate copy of the cancellation notice.

**Reconveyances**  
(C.R.S. 6-1-1115)

May only be granted when the following conditions have been met:

The contract must comply with all aspects of the law and provide the homeowner with a 30-day right to cure any default of the reconveyance contract.

Homeowners may exercise their right to cure three separate times, per C.R.S. 6-1-1115.

Prohibited conduct which could result in criminal penalties under C.R.S. 6-1-11118: Until the time within which the homeowner may cancel the transaction has fully elapsed, the equity purchaser shall not: · Accept an execution or conveyance of any interest in the residence · Record any document with the Clerk and Recorder signed by the homeowner · Transfer or encumber an interest in the residence to a third party, or purport to do either · Pay the homeowner any consideration · Return the original contract and other documents signed by the homeowner within 10 days following receipt of a notice of cancellation. · Make no untrue or misleading statements of material fact regarding the value of the residence

A new section was added to the Theft statutes in Colorado (C.R.S. 18-4-401), which requires a minimum fine if a person is convicted of or pleads guilty to theft by deception involving mortgage fraud. Any plea or conviction must have an order of restitution that compensates the victim for any costs caused by the offense.

In addition, the law specifically provides for the right to a civil action against the perpetrator of a mortgage fraud, regardless of whether that person was convicted of the crime.

For complete statutory requirements and descriptions of unconscionability that could void a contract, please refer to C.R.S. 6-1-1101.