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HOUSE BILL NO. 947

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend the Code of Virginia by adding in Chapter 4 of Title 55 an article numbered 2.2, consisting of sections numbered 55-66.15 through 55-66.27, relating to the protection of homeowners during foreclosure proceedings; penalties.*

Patrons—Iaquinto, Athey, Carrico, Cole, Crockett-Stark, Lohr, Massie, Merricks, Morgan, Sherwood and Tata

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 4 of Title 55 an article numbered 2.2, consisting of sections numbered 55-66.15 through 55-66.27 as follows:

*Article 2.2.**Foreclosure Protection.**§ 55-66.15. Applicability.*

A. Except as provided in subsection B, this article does not apply to:

1. A licensed attorney of the Commonwealth while he is performing an activity related to the individual's regular practice of law in the Commonwealth;

2. A person who holds or is owed an obligation secured by a lien on any residence in foreclosure while the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as a result of a foreclosure reconveyance;

3. A person doing business under any law of the Commonwealth or the United States regulating banks, trust companies, savings and loan associations, credit unions, or insurance companies, while the person performs services as a part of the person's ordinary business activities or any subsidiary, affiliate, or agent of such person while the subsidiary, affiliate, or agent provides services as a part of the subsidiary's, affiliate's, or agent's ordinary business;

4. A judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of foreclosure sale is sent;

5. A title insurer authorized to conduct business in the Commonwealth, while performing title insurance and settlement services;

6. A title insurance producer licensed in the Commonwealth, while performing services in accordance with the person's license;

7. A person licensed as a mortgage broker or mortgage lender while acting under the authority of that license;

8. A person licensed as a real estate broker in the Commonwealth while that person is engaged in any activity for which such license is needed and any conveyance or transfer of deed, title, or establishment of equitable interest is done through a settlement; or

9. A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders or foreclosure purchasers.

B. This article shall apply to any individual who:

1. Is functioning in a position listed under subsection A; and

2. Is engaged in activities or is providing services designed or intended to transfer title to a residence in foreclosure directly or indirectly to that individual, or an agent or affiliate of that individual.

§ 55-66.16. Definitions.

As used in this article, unless the context requires otherwise:

"Foreclosure consultant" means a person who:

1. Solicits or contacts a homeowner in writing, in person, or through any electronic medium and directly or indirectly makes a representation or offer to perform any service that will: (i) stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale; (ii) obtain a forbearance from any servicer, beneficiary, or mortgagee; (iii) assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published; (iv) obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation or extend the deadline to object to a ratification; (v) obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a

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58 mortgage on a residence in foreclosure or contained in the mortgage; (vi) assist the homeowner to
59 obtain a loan or an advance of funds; (vii) avoid or ameliorate the impairment of the homeowner's
60 credit resulting from the filing of a petition to foreclose or a foreclosure sale; (viii) save the
61 homeowner's residence from foreclosure; (ix) purchase or obtain an option to purchase the homeowner's
62 residence within 20 days of an advertised or docketed foreclosure sale; (x) arrange for the homeowner
63 to become a lessee or renter entitled to continue to reside in the homeowner's residence; (xi) arrange
64 for the homeowner to have an option to repurchase the homeowner's residence; or (xii) engage in any
65 documentation, grant, conveyance, sale, lease, trust, or gift by which the homeowner impedes the
66 homeowner's equity of redemption in the homeowner's residence; or

67 2. Systematically contacts owners of property that court records or newspaper advertisements show
68 are in foreclosure or in danger of foreclosure.

69 "Foreclosure consulting contract" means a written agreement between a foreclosure consultant and a
70 homeowner for the provision of any foreclosure consulting service or foreclosure reconveyance.

71 "Foreclosure consulting service" means any service including:

72 1. Receiving money for the purpose of distributing it to creditors in payment or partial payment of
73 any obligation secured by a lien on a residence in foreclosure;

74 2. Contacting creditors on behalf of a homeowner;

75 3. Arranging or attempting to arrange for an extension of the period within which a homeowner may
76 cure the homeowner's default and reinstate the homeowner's obligation;

77 4. Arranging or attempting to arrange for any delay or postponement of the sale of the residence in
78 foreclosure;

79 5. Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or
80 equitable title within 20 days of an advertised or docketed foreclosure sale;

81 6. Arranging or facilitating any transaction through which a homeowner will become a lessee,
82 optionee, life tenant, partial homeowner, or vested or contingent remainderman of the homeowner's
83 residence;

84 7. Arranging or facilitating the sale of a homeowner's residence or the transfer of legal title, in any
85 form, to another party as an alternative to foreclosure;

86 8. Arranging for a homeowner to have an option to repurchase the homeowner's residence after a
87 sale or transfer;

88 9. Arranging for or facilitating a homeowner remaining in the homeowner's residence as a tenant,
89 renter, or lessee; or

90 10. Arranging or facilitating any other grant, conveyance, sale, lease, trust, or gift by which a
91 homeowner impedes the homeowner's equity of redemption in the homeowner's residence.

92 "Foreclosure conveyance" means a transaction involving:

93 1. The transfer of title to real property by a homeowner during or incident to a proposed foreclosure
94 proceeding, either by transfer of interest from the homeowner to another party or by creation of a
95 mortgage, trust, or other lien or encumbrance during the foreclosure process that allows the acquirer to
96 obtain legal or equitable title to all or part of the property; and

97 2. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the
98 homeowner by the acquirer or a person acting in association with the acquirer that allows the
99 homeowner to possess the real property following completion of the foreclosure proceeding, including
100 an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to
101 purchase, lease, trust, or other contractual arrangement.

102 "Foreclosure purchaser" means a person who acquires title or possession of a deed or other
103 document to a residence in foreclosure as a result of a foreclosure conveyance.

104 "Foreclosure surplus acquisition" means a transaction involving the transfer, sale, or assignment of
105 the surplus remaining and due the homeowner based on the audit account during a foreclosure
106 proceeding.

107 "Foreclosure surplus purchaser" means a person who acts as the acquirer, or a person who acts in
108 joint venture or joint enterprise with an acquirer or acquirers, by assignment, purchase, grant, or
109 conveyance of the surplus resulting from a foreclosure sale.

110 "Homeowner" means the record owner of a residence in foreclosure, or an individual occupying the
111 residence under a use and possession order issued at the time a petition to foreclose is filed.

112 "Residence in foreclosure" means residential real property consisting of not more than four single
113 family dwelling units, one of which is occupied by the owner, or the owner's spouse or former spouse,
114 under a court order, as the primary residence, and against which a petition of foreclosure has been
115 filed.

116 § 55-66.17. Rescission.

117 A. In addition to any other right under law to cancel or rescind a contract, a homeowner has the
118 right to:

119 1. Rescind a foreclosure consulting contract at any time; and

2. Rescind a foreclosure reconveyance at any time before midnight of the third business day after any conveyance or transfer of legal or equitable title to a residence in foreclosure.

B. Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

C. Notice of rescission, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid and is effective if given by facsimile or electronic mail, upon delivery.

D. Notice of rescission need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract or foreclosure reconveyance.

E. As part of the rescission of a foreclosure consulting contract or foreclosure reconveyance, the homeowner shall repay, within 60 days from the date of rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract or foreclosure reconveyance, together with interest calculated at the rate of eight percent per year.

F. The right to rescind may not be conditioned on the repayment of any funds.

§ 55-66.18. Foreclosure consulting contract.

A. A foreclosure consulting contract shall:

1. Be provided to the homeowner for review before signing;

2. Be printed in at least 12-point type and written in the same language that is used by the homeowner and was used in discussions with the foreclosure consultant to describe the consultant's services or to negotiate the contract;

3. Fully disclose the exact nature of the foreclosure consulting services to be provided, including any foreclosure reconveyance that may be involved, and the total amount and terms of any compensation to be received by the foreclosure consultant or anyone working in association with the consultant;

4. Be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the Commonwealth; and

5. Contain the following notice, which shall be printed in at least 14-point boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

NOTICE REQUIRED BY VIRGINIA LAW

(Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage, or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the precise nature of the transaction.

(Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

If a transfer of the deed or title to your property is involved in any way, you may rescind the transfer any time within three days after the date you sign the deed or other document of sale or transfer. See the attached Notice of Rescission form for an explanation of this right. As part of any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of eight percent per year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.-
CONTACT AN ATTORNEY BEFORE SIGNING.

B. The contract shall contain on the first page, in at least 12-point type size:

1. The name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and

2. The date the homeowner signed the contract.

C. 1. The contract shall be accompanied by a completed form with the caption "NOTICE OF RESCISSION".

2. The Notice of Rescission shall: (i) be on a separate sheet of paper attached to the contract; (ii) be easily detachable; and (iii) contain the following statement printed in at least 14-point type:

NOTICE OF RESCISSION

(Date of Contract)

You may cancel or rescind this contract, without any penalty, at any time.

If you want to end this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest - calculated at the rate of eight percent per year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.-
CONTACT AN ATTORNEY BEFORE SIGNING.

NOTICE OF RESCISSION

TO:(name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind this contract.

(Date)

(Homeowner's signature)

D. The foreclosure consultant shall provide the homeowner with a signed and dated copy of the contract and the attached notice of rescission immediately upon execution of the contract.

E. The time during which the homeowner may rescind the contract does not begin to run until the foreclosure consultant has complied with this section.

F. Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this chapter, consent to jurisdiction for litigation or choice of law in a state other than Virginia, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void and severable.

§ 55-66.19. Prohibited activities by foreclosure consultant.

A foreclosure consultant may not:

1. Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

2. Claim, demand, charge, collect, or receive any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds eight percent per year;

3. Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation;

4. Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

5. Acquire any interest, directly or indirectly, or by means of a subsidiary, affiliate, or corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted;

6. Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law; or

7. Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this article.

§ 55-66.20. Foreclosure reconveyance.

A. If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "Notice of Transfer of Deed or Title."

B. The document entitled "Notice of Transfer of Deed or Title" shall:

1. Contain the entire agreement of the parties;

2. Be printed in 12-point type and written in the same language that is used by the homeowner and was used in discussions to describe the foreclosure consultant's or foreclosure purchaser's services or to negotiate the transfer or sale of the property;

3. Be dated and personally signed by the homeowner and the foreclosure purchaser and witnessed and acknowledged by a notary public appointed and commissioned by the Commonwealth;

4. Describe in detail the terms of any foreclosure conveyance including: (i) the name, business address, telephone number, and facsimile number of the person to whom the deed or title will be transferred; (ii) the address of the residence in foreclosure; (iii) the total consideration to be given by the foreclosure purchaser, the foreclosure consultant, and any other party as a result of the transfer; (iv) the time at which title is to be transferred to the foreclosure purchaser and the terms of any conveyance; (v) any financial or legal obligations that the homeowner may remain subject to, including a description of any mortgages, liens, or other obligations that will remain in place; (vi) a description of any services of any nature that the foreclosure purchaser will perform for the homeowner before or after the sale or transfer; (vii) a complete description of the terms of any related agreement designed to allow the homeowner to remain in the home, including the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract, or option to buy, and any provision for eviction or removal of the homeowner in the case of late payment; and (viii) how any repurchase price or fee associated with any transfer or title or deed back to the homeowner will be calculated;

5. Contain the following statement printed in at least 14-point boldface type and located in immediate proximity to the space reserved for the homeowner's signature:

If you change your mind about transferring ownership of your property, you, the homeowner, may rescind the transfer of the deed or title to your property any time within the next three days. As part of any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of eight percent per year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.-
CONTACT AN ATTORNEY BEFORE SIGNING.

C. 1. If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE".

2. The notice of right to cancel transfer of deed or title shall: (i) be a separate document and not printed on the back of any other document; and (ii) contain the following statement printed in at least 14-point type:

NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE

(Date)

You may cancel or rescind the transfer of ownership of your property through the transfer of a deed or title within three business days after the date you sign this document.

To rescind this transaction, mail or deliver a signed and dated copy of this Notice, or any other written notice expressing a similar intent to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

297
298 As part of any rescission, you (the homeowner) must repay any money spent on y-
299 our behalf as a result of this agreement, within 60 days, along with interest -
300 calculated at the rate of eight percent per year.

301
302 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.-
303 CONTACT AN ATTORNEY BEFORE SIGNING.

304
305 NOTICE OF RESCISSION

306
307 TO: (name of foreclosure consultant)

308
309 (address of foreclosure consultant, including facsimile and electronic mail)

310
311 I hereby rescind the transfer of deed or title to my property. Please return -
312 all executed documents to me.

313
314 (Date)

315
316 (Homeowner's signature)

317 D. The foreclosure purchaser shall provide the homeowner with a copy of the Notice of Right to
318 Cancel Transfer of Deed or Title immediately on execution of any document that includes a foreclosure
319 reconveyance.

320 E. The time during which the homeowner may rescind the contract or transfer does not begin to run
321 until the foreclosure purchaser has complied with this section.

322 F. Any provision in a foreclosure consulting contract or other agreement concerning a foreclosure
323 reconveyance that attempts or purports to waive the homeowner's rights under this section, consent to
324 jurisdiction for litigation or choice of law in a state other than Virginia, consent to venue in a county
325 other than the county in which the property is located, or impose any costs or filing fees greater than
326 the fees required to file an action in a circuit court, is void and severable.

327 G. A foreclosure reconveyance may not be carried out using a power of attorney from the
328 homeowner.

329 H. A notice of rescission need not take the particular form specified in this article or any form
330 contained in any agreement with the foreclosure consultant or foreclosure purchaser and is effective,
331 however expressed, if it indicates the intention of the homeowner to rescind the reconveyance
332 agreement.

333 I. The right to rescind may not be conditioned on the repayment of any funds.

334 J. Within 10 days after receipt of a notice of rescission given in accordance with this article, the
335 foreclosure purchaser shall return, without condition, any original deed, title, contract, and any other
336 document signed by the homeowner.

337 K. During the three-day rescission period, a deed or other document affecting title to the
338 homeowner's residence may not be recorded.

339 § 55-66.21. Obligations of foreclosure purchaser.

340 A. In this section the following words have the meaning indicated:

341 "Primary housing expenses" means the total amount required to pay regular principal, interest, rent,
342 utilities, hazard insurance, real estate taxes, and association dues on a property.

343 "Resale" means a bona fide market sale of property subject to a foreclosure reconveyance by the
344 foreclosure purchaser to an unaffiliated third party.

345 "Resale price" means the gross sale price of a property on resale.

346 "Settlement" means an in-person, face-to-face meeting with the homeowner to complete final
347 documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable
348 interest in real property, conducted by a settlement agent who is not employed by or an affiliate of the
349 foreclosure purchaser, during which the homeowner must be presented with a completed copy of the
350 HUD-1 Settlement Form.

351 B. A foreclosure purchaser may not:

352 1. Enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless: (i) the
353 foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable
354 ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of
355 the terms of a foreclosure conveyance, or, if the foreclosure conveyance provides for a lease with an
356 option to repurchase the property, the homeowner has or will have a reasonable ability to make the

lease payments and repurchase the property within the term of the option to repurchase; (ii) the foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected; and (iii) the foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act (15 U.S.C. 1639) and its implementing regulations for any foreclosure reconveyance in which the homeowner obtains a vendee interest in a contract for deed;

2. Fail to: (i) ensure that title to the property has been reconveyed to the homeowner in a timely manner if this article or the terms of a foreclosure reconveyance agreement require a reconveyance; or (ii) make payment to the homeowner within 90 days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82 percent of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within 18 months after entering into a foreclosure reconveyance agreement;

3. Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

4. Represent, directly or indirectly, that: (i) the foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner; (ii) the foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have; (iii) the foreclosure purchaser is assisting the homeowner to "save the house" or use a substantially similar phrase; or (iv) the foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property;

5. Make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including statements regarding the value of the residence in foreclosure, the amount of proceeds the homeowner will receive after a foreclosure sale, any contract term, or the homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance; or

6. Until the homeowner's right to rescind or cancel the transaction has expired: (i) record any document, including an instrument of conveyance, signed by the homeowner; or (ii) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.

C. For purposes of subdivision B 1, there is a rebuttable presumption that:

1. A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60 percent of the homeowner's monthly gross income; and

2. The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities, and income.

D. 1. The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within 18 months after entering into a foreclosure reconveyance agreement in accordance with clause (ii) of subdivision B 2.

2. The accounting shall be on a form prescribed by the Attorney General and shall include detailed documentation of expenses and other consideration paid by the foreclosure purchaser and deducted from the resale price.

E. A bona fide purchaser for value or bona fide lender for value who enters into a transaction with a homeowner or a foreclosure purchaser when a foreclosure consulting contract is in effect or during the period when a foreclosure reconveyance may be rescinded, without notice of those facts, receives good title to the property, free and clear of the right of the parties to the foreclosure consulting contract or the right of the homeowner to rescind the foreclosure reconveyance.

F. This article may not be construed to impose any duty on a purchaser, title insurer, or title insurance producer with respect to the application of the proceeds of a sale of property by a foreclosure purchaser.

§ 55-66.22. Foreclosure surplus acquisition.

A. Each foreclosure surplus acquisition shall be in the form of a written contract.

B. Each foreclosure surplus acquisition contract shall:

1. Contain the entire agreement of the parties;

2. Be printed in at least 12-point type, in the same language that is used by the homeowner and was used by the foreclosure surplus purchaser and the homeowner to negotiate the sale of the residence in foreclosure;

3. Be fully completed, dated, and personally signed by the homeowner and the foreclosure surplus purchaser before the statement of account has been referred to the auditor; and

4. Include: (i) the name, business address, and telephone number of the foreclosure surplus

418 purchaser; (ii) the address of the residence in foreclosure; (iii) the total consideration to be given by the
419 foreclosure surplus purchaser in connection with or incident to the transaction; (iv) a complete
420 description of the terms of payment or other consideration, including any services of any nature that the
421 foreclosure surplus purchaser represents the foreclosure surplus purchaser will perform for the
422 homeowner before or after the sale; and (v) the following notice, which shall be printed in at least
423 14-point boldface type, completed with the name of the foreclosure surplus purchaser, and located in
424 immediate proximity to the space reserved for the homeowner's signature:

425

426 NOTICE REQUIRED BY VIRGINIA LAW

427

428 If you have any questions about this document, seek legal counsel before signi-
429 ng. This is an important legal contract. Failure to read and understand thes-
430 e documents may cause you to lose valuable rights.

431

432 The effect of these documents is that you may lose the equity in your home. T-
433 his agreement will not stop the foreclosure or get your house back. If you be-
434 lieve the foreclosure sale was improper, you should immediately seek legal adv-
435 ice to determine what objections to ratification or to rescind the order of ra-
436 tification may be filed.

437

438 You may rescind this contract for the sale of your house without any penalty o-
439 r obligation at any time within 10 days after the auditor states the account o-
440 f the foreclosure sale. See the attached Notice of Rescission form for an exp-
441 lanation of this right. As part of the rescission, you must repay from the su-
442 rplus proceeds any consideration received, directly or indirectly, together wi-
443 th an amount for interest calculated at the rate of eight percent per year.

444

445 C. 1. The contract shall be accompanied by a completed form in duplicate, captioned "Notice of
446 Rescission".

447 2. The Notice of Rescission shall: (i) be on a separate sheet of paper attached to the contract; (ii) be
448 easily detachable; and (iii) contain the following statement printed in at least 15-point type:

449

450 NOTICE OF RESCISSION

451

452 (Date of contract)

453

454 You may rescind this contract for the sale of your house at any time within 10-
455 days after the auditor states the account of the foreclosure sale.

456

457 To cancel this transaction, mail or deliver a signed and dated copy of this No-
458 tice of Rescission to (Name of purchaser) at -

459 (Address of purchaser, including facsimile and electro-
460 nic mail) with a copy to the court appointed auditor.

461

462 I hereby rescind this transaction.

463

464 (Date)

465

466 (Homeowner's signature)

467 D. The foreclosure surplus purchaser shall provide the homeowner with a copy of the contract and
468 the attached Notice of Rescission at the time the contract is executed by all parties.

469 E. The contract required by this section survives delivery of any instrument of conveyance of the
470 residence in foreclosure, is binding in the audit, and has no effect on persons other than the parties to
471 the contract.

472 F. Any provision in a contract that attempts or purports to waive any of the rights specified in this
473 chapter, consent to jurisdiction or choice of law in a state other than Virginia, consent to venue in a
474 county other than the county in which the property is located, or impose any costs or filing fees greater
475 than the fees required to file an action in a circuit court, is void and severable.

§ 55-66.23. Rescission.

A. In addition to any other right of rescission, a homeowner has the right to rescind any contract with a foreclosure surplus purchaser at any time within 10 days after the statement of audit account of the foreclosure sale.

B. 1. Rescission occurs when the homeowner delivers, by any means, a written Notice of Rescission to the address specified in the contract, with a copy to the auditor. As part of the rescission, the homeowner shall repay any consideration received directly or indirectly, together with interest calculated at the rate of eight percent per year.

2. On receipt of the Notice of Rescission, the auditor shall restate the account. The repayment of consideration and interest by the homeowner shall be incorporated by the auditor into the revised statement of account filed with the court.

3. Upon ratification of the amended audit, the attorney named in the mortgage, mortgage assignee for purposes of foreclosure, trustee, or substitute trustee in making distribution of the surplus funds shall comply with the revised court-approved audit.

C. A Notice of Rescission given by a homeowner need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the contract.

D. The right to rescind may not be conditioned on the repayment of any funds.

E. Within 10 days after receipt of a Notice of Rescission given in accordance with this section, the foreclosure surplus purchaser shall return, without condition, the original contract and all other documents signed by the homeowner.

§ 55-66.24. Waiver of rights.

A. A person may not induce or attempt to induce a homeowner to waive the homeowner's rights under this article.

B. Any waiver by a homeowner of the provisions of this article is void and unenforceable as contrary to public policy.

§ 55-66.25. Enforcement.

A. The Attorney General may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this article from engaging or continuing to engage in the violation.

B. The court may enter any order or judgment necessary to:

1. Prevent the use by a person of any prohibited practice;

2. Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or

3. Appoint a receiver in case of willful violation of this chapter.

C. In any action brought by the Attorney General under this section, the Attorney General is entitled to recover the costs of the action for the use of the Commonwealth.

§ 55-66.26. Action for damages by homeowner.

A. In addition to any action by the Attorney General authorized under this article and any other action otherwise authorized by law, a homeowner may bring an action for damages incurred as a result of a practice prohibited by this article.

B. A homeowner who brings an action under this section and who is awarded damages may also seek, and the court may award, reasonable attorney fees.

C. If the court finds that the defendant willfully or knowingly violated this article, the court may award damages equal to three times the amount of actual damages.

§ 55-66.27. Penalties.

Any person who violates any provision of this article is guilty of a Class 5 felony.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.