

AMENDED IN SENATE AUGUST 13, 2008
AMENDED IN SENATE JULY 2, 2008
AMENDED IN SENATE JUNE 12, 2008
AMENDED IN ASSEMBLY JANUARY 24, 2008
AMENDED IN ASSEMBLY JANUARY 7, 2008
CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 180

**Introduced by Assembly Members Bass and Lieu
(Coauthors: Assembly Members Lieber and Wolk)**

January 24, 2007

An act to amend Sections 2945.2, 2945.3, and 2945.4 of, and to add Section 2945.45 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 180, as amended, Bass. Mortgages: foreclosure consultants.

Existing law defines a foreclosure consultant as a person who offers, for compensation, to perform specified services for a homeowner relating to a foreclosure sale, except as specified. Existing law prohibits a foreclosure consultant from entering into an agreement to assist the owner in arranging, or arrange for the owner, the release of surplus funds prior to 65 days after the trustee's sale is conducted.

This bill would, instead, prohibit a foreclosure consultant from entering into an agreement described above at any time.

Existing law allows a homeowner to cancel a contract with a foreclosure consultant within 3 days after signing the contract by providing written notice of the cancellation at the address provided by

the foreclosure consultant. Existing law requires that the contract be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. Existing law prohibits a foreclosure consultant from taking any power of attorney from an owner, except to inspect documents as provided by law.

This bill would instead allow a homeowner to cancel a contract with a foreclosure consultant within 5 days after signing the contract, and to do so by mail, e-mail, or facsimile. It would require that a contract with a foreclosure consultant be written in the language principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, and would require the foreclosure consultant, in specified circumstances, to provide the owner, before the owner signs the contract, with one or more copies of a completed contract written in other languages. The bill would prohibit a foreclosure consultant from taking any power of attorney from an owner for any purpose.

The bill would require a foreclosure consultant to register with the Department of Justice in accordance with certain requirements, and to obtain and maintain a surety bond for each transaction of \$100,000. A violation of these provisions would be a crime. By creating a new crime, the bill would impose a state-mandated local program. *The bill would create the Foreclosure Consultant Regulation Fund in the State Treasury for the deposit of fees submitted to the Department of Justice for registration as a foreclosure consultant, and available to the department upon appropriation by the Legislature for the costs of administering the registration program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would provide that its provisions will become operative on July 1, 2009.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2945.2 of the Civil Code is amended to
2 read:

1 2945.2. (a) In addition to any other right under law to rescind
2 a contract, an owner has the right to cancel such a contract until
3 midnight of the fifth business day, as defined in subdivision (e) of
4 Section 1689.5, after the day on which the owner signs a contract
5 that complies with Section 2945.3.

6 (b) Cancellation occurs when the owner gives written notice of
7 cancellation to the foreclosure consultant by mail at the address
8 specified in the contract, or by facsimile or electronic mail at the
9 number or address identified in the contract.

10 (c) Notice of cancellation, if given by mail, is effective when
11 deposited in the mail properly addressed with postage prepaid. If
12 given by facsimile or electronic mail, notice of cancellation is
13 effective when successfully transmitted.

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

18 SEC. 2. Section 2945.3 of the Civil Code is amended to read:

19 2945.3. (a) Every contract shall be in writing and shall fully
20 disclose the exact nature of the foreclosure consultant’s services
21 and the total amount and terms of compensation.

22 (b) The following notice, printed in at least 14-point boldface
23 type and completed with the name of the foreclosure consultant,
24 shall be printed immediately above the statement required by
25 subdivision (d):

26
27 “NOTICE REQUIRED BY CALIFORNIA LAW

28 _____ or anyone working

29
30 (Name)

31
32 for him or her CANNOT:

33 (1) Take any money from you or ask you for money
34 until _____ has

35
36 (Name)

37 completely finished doing everything he or she said he or she would do; and

38 (2) Ask you to sign or have you sign any lien, deed of trust, or deed.”

39

1 (c) The contract shall be written in the same language as
 2 principally used by the foreclosure consultant to describe his or
 3 her services or to negotiate the contract. In addition, the foreclosure
 4 consultant shall provide the owner, before the owner signs the
 5 contract, with a copy of a completed contract written in any other
 6 language used in any communication between the foreclosure
 7 consultant and the owner and in any language requested by the
 8 owner. If English is the language principally used by the
 9 foreclosure consultant to describe the foreclosure consultant’s
 10 services or to negotiate the contract, the foreclosure consultant
 11 shall notify the owner orally and in writing before the owner signs
 12 the contract that the owner has the right to ask for a completed
 13 copy of the contract in a language other than English.

14 (d) The contract shall be dated and signed by the owner and
 15 shall contain in immediate proximity to the space reserved for the
 16 owner’s signature a conspicuous statement in a size equal to at
 17 least 10-point boldface type, as follows: “You, the owner, may
 18 cancel this transaction at any time prior to midnight of the fifth
 19 business day after the date of this transaction. See the attached
 20 notice of cancellation form for an explanation of this right.”

21 (e) The contract shall contain on the first page, in a type size
 22 no smaller than that generally used in the body of the document,
 23 each of the following:

24 (1) The name, mailing address, electronic mail address, and
 25 facsimile number of the foreclosure consultant to which the notice
 26 of cancellation is to be mailed.

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

28 (f) The contract shall be accompanied by a completed form in
 29 duplicate, captioned “notice of cancellation,” which shall be
 30 attached to the contract, shall be easily detachable, and shall contain
 31 in type of at least 10-point the following statement written in the
 32 same language as used in the contract:

33
 34 “NOTICE OF CANCELLATION

35 _____
 36 (Enter date of transaction) (Date)

37
 38 You may cancel this transaction, without any penalty or
 39 obligation, within five business days from the above date.
 40

1
2 To cancel this transaction, mail or deliver a signed and dated copy of this
3 cancellation notice, or any other written notice, or send a telegram,

4
5 to _____
6 (Name of foreclosure consultant)
7 at _____
8 (Address of foreclosure consultant’s place of business)
9

10 You may also cancel by sending a facsimile (fax) of a signed and dated copy
11 of this cancellation notice, or any other written notice, to the following number:

12 _____
13 (Facsimile telephone number of foreclosure consultant’s place of business)

14 You may also cancel by sending an e-mail canceling this transaction to the
15 following e-mail address:

16 _____
17 (E-mail address of foreclosure consultant’s business)

18
19 I hereby cancel this transaction
20 _____
21 (Date)
22 _____”
23 (Owner’s signature)
24

25 (g) The foreclosure consultant shall provide the owner with a
26 copy of the contract and the attached notice of cancellation.

27 (h) Until the foreclosure consultant has complied with this
28 section, the owner may cancel the contract.

29 SEC. 3. Section 2945.4 of the Civil Code is amended to read:
30 2945.4. It shall be a violation for a foreclosure consultant to:

31 (a) Claim, demand, charge, collect, or receive any compensation
32 until after the foreclosure consultant has fully performed each and
33 every service the foreclosure consultant contracted to perform or
34 represented that he or she would perform.

35 (b) Claim, demand, charge, collect, or receive any fee, interest,
36 or any other compensation for any reason which exceeds 10 percent
37 per annum of the amount of any loan which the foreclosure
38 consultant may make to the owner.

1 (c) Take any wage assignment, any lien of any type on real or
2 personal property, or other security to secure the payment of
3 compensation. That security shall be void and unenforceable.

4 (d) Receive any consideration from any third party in connection
5 with services rendered to an owner unless that consideration is
6 fully disclosed to the owner.

7 (e) Acquire any interest in a residence in foreclosure from an
8 owner with whom the foreclosure consultant has contracted. Any
9 interest acquired in violation of this subdivision shall be voidable,
10 provided that nothing herein shall affect or defeat the title of a
11 bona fide purchaser or encumbrancer for value and without notice
12 of a violation of this article. Knowledge that the property was
13 “residential real property in foreclosure,” does not constitute notice
14 of a violation of this article. This subdivision may not be deemed
15 to abrogate any duty of inquiry which exists as to rights or interests
16 of persons in possession of residential real property in foreclosure.

17 (f) Take any power of attorney from an owner for any purpose.

18 (g) Induce or attempt to induce any owner to enter into a contract
19 which does not comply in all respects with Sections 2945.2 and
20 2945.3.

21 (h) Enter into an agreement at any time to assist the owner in
22 arranging, or arrange for the owner, the release of surplus funds
23 after the trustee’s sale is conducted, whether the agreement involves
24 direct payment, assignment, deed, power of attorney, assignment
25 of claim from an owner to the foreclosure consultant or any person
26 designated by the foreclosure consultant, or any other
27 compensation.

28 SEC. 4. Section 2945.45 is added to the Civil Code, to read:

29 2945.45. (a) Except as provided in subdivision (b) of Section
30 2945.1, a person shall not take any action specified in subdivision
31 (a) of Section 2945.1 unless the person satisfies the following
32 requirements:

33 (1) The person registers with, and is issued and maintains a
34 certificate of registration from, the Department of Justice in
35 accordance with the following requirements:

36 (A) The person shall submit a completed registration form,
37 along with applicable fees, to the department. The registration
38 form shall include the name, address, and telephone number of the
39 foreclosure consultant, all of the names, addresses, telephone
40 numbers, Internet Web sites, and e-mail addresses used or proposed

1 to be used in connection with acting as a foreclosure consultant,
2 a statement that the person has not been convicted of, or pled nolo
3 contendere to, any crime involving fraud, misrepresentation,
4 dishonesty, or a violation of this article, a statement that the person
5 has not been liable under any civil judgment for fraud,
6 misrepresentation, or violations of this article or of Section 17200
7 or 17500 of the Business and Professions Code, and any additional
8 information required by the department.

9 (B) The registration form shall be accompanied by a copy of
10 all print or electronic advertising and other promotional material,
11 and scripts of all telephonic or broadcast advertising and other
12 statements used or proposed to be used in connection with acting
13 as a foreclosure consultant.

14 (C) The registration form shall be accompanied by a copy of
15 the bond required pursuant to paragraph (2).

16 (D) The person shall file an update of any material change in
17 the information required by subparagraphs (A) and (B) with the
18 department.

19 (E) The person shall pay any fee set by the department to defray
20 reasonable costs incurred in connection with the department's
21 responsibilities under this article.

22 (2) The person obtains and maintains in force a surety bond for
23 each transaction in the amount of one hundred thousand dollars
24 (\$100,000). The bond shall be executed by a corporate surety
25 admitted to do business in this state. The bond shall be made in
26 favor of the homeowner or, if the homeowner cannot be found, in
27 favor of the State of California for the benefit of the homeowner
28 for damages caused by the foreclosure consultant's violation of
29 this article or any other provision of law. A copy of the bond shall
30 be filed with the Secretary of State, with a copy provided to the
31 department pursuant to subparagraph (C) of paragraph (1).

32 *(b) The Foreclosure Consultant Regulation Fund is hereby*
33 *created in the State Treasury for the deposit of fees submitted to*
34 *the Department of Justice pursuant to subparagraph (A) of*
35 *paragraph (1) of subdivision (a) for registration as a foreclosure*
36 *consultant. Moneys in the fund shall be available, upon*
37 *appropriation by the Legislature, for the costs of the department*
38 *incurred in connection with the administration of the registration*
39 *program.*

40 (b)

1 (c) The Department of Justice may refuse to issue, or may
 2 revoke, a certificate of registration because of any misstatement
 3 in the registration form, because the foreclosure consultant has
 4 been held liable for the violation of any law described in
 5 subparagraph (A) of paragraph (1) of subdivision (a), or because
 6 the foreclosure consultant has failed to maintain the bond required
 7 under paragraph (2) of subdivision (a).

8 (e)

9 (d) A person who violates subdivision (a) shall be punished, for
 10 each violation, by a fine of not less than one thousand dollars
 11 (\$1,000) and not more than twenty-five thousand dollars (\$25,000),
 12 by imprisonment in the county jail for not more than one year, or
 13 by both that fine and imprisonment. The imposition of a penalty
 14 pursuant to this subdivision shall not be affected by the availability
 15 of any other relief, remedy, or penalty provided by law, and shall
 16 not affect the availability of any such relief, remedy, or penalty.

17 SEC. 5. No reimbursement is required by this act pursuant to
 18 Section 6 of Article XIII B of the California Constitution because
 19 the only costs that may be incurred by a local agency or school
 20 district will be incurred because this act creates a new crime or
 21 infraction, eliminates a crime or infraction, or changes the penalty
 22 for a crime or infraction, within the meaning of Section 17556 of
 23 the Government Code, or changes the definition of a crime within
 24 the meaning of Section 6 of Article XIII B of the California
 25 Constitution.

26 SEC. 6. *This act shall become operative on July 1, 2009.*