

Assembly Bill No. 180

Passed the Assembly August 31, 2008

Chief Clerk of the Assembly

Passed the Senate August 22, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1632, 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, 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 specified other languages, and would make a conforming change in this regard. 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 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 permit the Department of Justice to refuse to issue, or to revoke, a foreclosure consultant's registration for any violation of the law regulating foreclosure consultants. 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 make moneys in that fund 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.

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

SECTION 1. Section 1632 of the Civil Code is amended to read:

1632. (a) The Legislature hereby finds and declares all of the following:

(1) This section was enacted in 1976 to increase consumer information and protections for the state's sizeable and growing Spanish-speaking population.

(2) Since 1976, the state's population has become increasingly diverse and the number of Californians who speak languages other than English as their primary language at home has increased dramatically.

(3) According to data from the United States Census of 2000, of the more than 12 million Californians who speak a language other than English in the home, approximately 4.3 million speak an Asian dialect or another language other than Spanish. The top five languages other than English most widely spoken by

Californians in their homes are Spanish, Chinese, Tagalog, Vietnamese, and Korean. Together, these languages are spoken by approximately 83 percent of all Californians who speak a language other than English in their homes.

(b) Any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in that contract or agreement:

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3.

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family or household purposes.

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

(4) Notwithstanding paragraph (2), a loan or extension of credit for use primarily for personal, family or household purposes where the loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) of the Financial Code.

(5) Notwithstanding paragraph (2), a reverse mortgage as described in Chapter 8 (commencing with Section 1923) of Title 4 of Part 4 of Division 3.

(6) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(7) A foreclosure consulting contract subject to Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3.

(c) Notwithstanding subdivision (b), for a loan subject to this part and to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Section 10240 of the Business and Professions Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, is in compliance with subdivision (b).

(d) At the time and place where a lease, sublease, or rental contract or agreement described in subdivision (b) is executed, notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be provided to the lessee or tenant.

(e) Provision by a supervised financial organization of a translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, prior to the execution of the contract or agreement, shall also be deemed in compliance with the requirements of subdivision (b) with regard to the original contract or agreement.

(1) “Regulation M” and “Regulation Z” mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(2) As used in this section, “supervised financial organization” means a bank, savings association as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with

Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code.

(f) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (b) is executed, a notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be conspicuously displayed to the effect that the person described in subdivision (b) is required to provide a contract or agreement in the language in which the contract or agreement was negotiated, or a translation of the disclosures required by law in the language in which the contract or agreement was negotiated, as the case may be. If a person described in subdivision (b) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the language in which the contract or agreement was negotiated is used.

(g) The term “contract” or “agreement,” as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The term “contract” or “agreement” does not include any subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.

The term “contract” or “agreement” does not include a home improvement contract as defined in Sections 7151.2 and 7159 of the Business and Professions Code, nor does it include plans, specifications, description of work to be done and materials to be used, or collateral security taken or to be taken for the retail buyer’s obligation contained in a contract for the installation of goods by a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if the home improvement contract or installation contract is otherwise a part of a contract described in subdivision (b).

Matters ordinarily incorporated by reference in contracts or agreements as described in paragraph (3) of subdivision (b), including, but not limited to, rules and regulations governing a tenancy and inventories of furnishings to be provided by the person

described in subdivision (b), are not included in the term “contract” or “agreement.”

(h) This section does not apply to any person engaged in a trade or business who negotiates primarily in a language other than English, as described by subdivision (b), if the party with whom he or she is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating himself or herself as a tenant, lessee, or sublessee, or similarly obligates himself or herself by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through his or her own interpreter.

As used in this subdivision, “his or her own interpreter” means a person, not a minor, able to speak fluently and read with full understanding both the English language and any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, and who is not employed by, or whose service is made available through, the person engaged in the trade or business.

(i) Notwithstanding subdivision (b), a translation may retain the following elements of the executed English-language contract or agreement without translation: names and titles of individuals and other persons, addresses, brand names, trade names, trademarks, registered service marks, full or abbreviated designations of the make and model of goods or services, alphanumeric codes, numerals, dollar amounts expressed in numerals, dates, and individual words or expressions having no generally accepted non-English translation. It is permissible, but not required, that this translation be signed.

(j) The terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the contract or the disclosures required by subdivision (e) in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation.

(k) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. When the contract for a consumer credit sale or consumer lease which has been sold and assigned to

a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom he or she made the contract, and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded and the assignor shall promptly repurchase the contract from the assignee.

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

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

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

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

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

SEC. 3. Section 2945.3 of the Civil Code is amended to read:

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

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

“NOTICE REQUIRED BY CALIFORNIA LAW

_____ or anyone working

(Name)

for him or her CANNOT:

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

(Name)

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

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

(c) The contract shall be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. In addition, the foreclosure consultant shall provide the owner, before the owner signs the contract, with a copy of a completed contract written in any other language used in any communication between the foreclosure consultant and the owner and in any language described in subdivision (b) of Section 1632 and requested by the owner. If English is the language principally used by the foreclosure consultant to describe the foreclosure consultant’s services or to negotiate the contract, the foreclosure consultant shall notify the owner orally and in writing before the owner signs the contract that the owner has the right to ask for a completed copy of the contract in a language described in subdivision (b) of Section 1632.

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

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

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

(2) The date the owner signed the contract.

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

“NOTICE OF CANCELLATION

(Enter date of transaction) (Date)

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

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

to _____
(Name of foreclosure consultant)
at _____
(Address of foreclosure consultant’s place of business)

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

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

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

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

I hereby cancel this transaction

(Date)

(Owner’s signature)

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

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

SEC. 4. Section 2945.4 of the Civil Code is amended to read: 2945.4. It shall be a violation for a foreclosure consultant to:

(a) 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 he or she would perform.

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

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

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

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

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

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

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

SEC. 5. Section 2945.45 is added to the Civil Code, to read:

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

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

(A) The person shall submit a completed registration form, along with applicable fees, to the department. The registration form shall include the name, address, and telephone number of the foreclosure consultant, all of the names, addresses, telephone numbers, Internet Web sites, and e-mail addresses used or proposed to be used in connection with acting as a foreclosure consultant, a statement that the person has not been convicted of, or pled nolo contendere to, any crime involving fraud, misrepresentation, dishonesty, or a violation of this article, a statement that the person has not been liable under any civil judgment for fraud, misrepresentation, or violations of this article or of Section 17200 or 17500 of the Business and Professions Code, and any additional information required by the department.

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

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

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

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

(2) The person obtains and maintains in force a surety bond in the amount of one hundred thousand dollars (\$100,000). The bond shall be executed by a corporate surety admitted to do business in this state. The bond shall be made in favor of the State of California for the benefit of homeowners for damages caused by the foreclosure consultant's violation of this article or any other provision of law. A copy of the bond shall be filed with the Secretary of State, with a copy provided to the department pursuant to subparagraph (C) of paragraph (1).

(b) The Foreclosure Consultant Regulation Fund is hereby created in the State Treasury for the deposit of fees submitted to

the Department of Justice pursuant to subparagraph (A) of paragraph (1) of subdivision (a) for registration as a foreclosure consultant. Moneys in the fund shall be available, upon appropriation by the Legislature, for the costs of the department incurred in connection with the administration of the registration program.

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

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

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

SEC. 7. This act shall become operative on July 1, 2009.

Approved _____, 2008

Governor