

Introduced by Senator CalderonFebruary 26, 2009

An act to amend Section 2945 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 479, as introduced, Calderon. Mortgage foreclosure consultants.

Existing law generally regulates mortgage foreclosure consultants, as defined. Existing law states that it is the intent of the Legislature in those regulatory provisions to require that foreclosure consultant service agreements be expressed in writing, to safeguard the public against deceit and financial hardship, to permit rescission of foreclosure consultation contracts, to prohibit representations that tend to mislead, and to encourage fair dealing in the rendition of foreclosure services.

This bill would state the intent of the Legislature to enact legislation that would protect consumers who seek out debt settlement or debt management services by codifying acceptable industry business practices and outlawing unacceptable industry business practices.

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

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

- 1 SECTION 1. Section 2945 of the Civil Code is amended to
- 2 read:
- 3 2945. (a) The Legislature finds and declares that homeowners
- 4 whose residences are in foreclosure are subject to fraud, deception,
- 5 harassment, and unfair dealing by foreclosure consultants from
- 6 the time a Notice of Default is recorded pursuant to Section 2924

1 until the time surplus funds from any foreclosure sale are
2 distributed to the homeowner or his or her successor. Foreclosure
3 consultants represent that they can assist homeowners who have
4 defaulted on obligations secured by their residences. These
5 foreclosure consultants, however, often charge high fees, the
6 payment of which is often secured by a deed of trust on the
7 residence to be saved, and perform no service or essentially a
8 worthless service. Homeowners, relying on the foreclosure
9 consultants' promises of help, take no other action, are diverted
10 from lawful businesses which could render beneficial services,
11 and often lose their homes, sometimes to the foreclosure
12 consultants who purchase homes at a fraction of their value before
13 the sale. Vulnerable homeowners are increasingly relying on the
14 services of foreclosure consultants who advise the homeowner
15 that the foreclosure consultant can obtain the remaining funds from
16 the foreclosure sale if the homeowner executes an assignment of
17 the surplus, a deed, or a power of attorney in favor of the
18 foreclosure consultant. This results in the homeowner paying an
19 exorbitant fee for a service when the homeowner could have
20 obtained the remaining funds from the trustee's sale from the
21 trustee directly for minimal cost if the homeowner had consulted
22 legal counsel or had sufficient time to receive notices from the
23 trustee pursuant to Section 2924j regarding how and where to make
24 a claim for excess proceeds.

25 (b) The Legislature further finds and declares that foreclosure
26 consultants have a significant impact on the economy of this state
27 and on the welfare of its citizens.

28 (c) The intent and purposes of this article are the following:

29 (1) To require that foreclosure consultant service agreements
30 be expressed in writing; to safeguard the public against deceit and
31 financial hardship; to permit rescission of foreclosure consultation
32 contracts; to prohibit representations that tend to mislead; and to
33 encourage fair dealing in the rendition of foreclosure services.

34 (2) The provisions of this article shall be liberally construed to
35 effectuate this intent and to achieve these purposes.

36 (d) *It is the intent of the Legislature to enact legislation that*
37 *would protect consumers who seek out debt settlement or debt*

- 1 *management services by codifying acceptable industry business*
- 2 *practices and outlawing unacceptable industry business practices.*

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