

Introduced by Senator Gaines

February 15, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 388, as introduced, Gaines. 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 make a technical, nonsubstantive change to that provision.

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
7 until the time surplus funds from any foreclosure sale are
8 distributed to the homeowner or his or her successor. Foreclosure

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

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

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

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

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