



BILL SUMMARY

HF 2653 Regulates Foreclosure Consultants

Status of Bill: House Calendar
Committee: Commerce (21-0)
Floor Manager: Rep. Deborah Berry
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This bill was proposed by the Attorney General to stop abuses involving mortgage foreclosure consultants and foreclosure reconveyance transactions.

A Foreclosure Reconveyance is a transaction that:

- Involves the transfer of the title by the homeowner either by an interest in the home or by a mortgage, lien or other encumbrance during a foreclosure, forfeiture, or tax sale process that lets the acquirer obtain title by redeeming the property as a junior lien holder, and;
- With the later conveyance of an interest back to the owner, letting the owner possess the residence or other property, including, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

A Foreclosure Consultant is one who, for a fee, directly or indirectly, solicits, represents, or offers to do any of the following:

1. Stop or postpone a foreclosure, foreclosure sale, forfeiture, sheriff's sale, or tax sale – or save the owner's residence from such an event - or assist such an owner to get a loan as an advance of funds.
2. Get a forbearance, modification, or repayment plan from a beneficiary or mortgagee.
3. Assist the owner to exercise the right of redemption, to cure the mortgage or real estate contract default, or to redeem the property from a tax sale.
4. Get an extension of the period for reinstating the owner's obligation.
5. Get a waiver of an acceleration clause in a note or contract secured by a residential mortgage or contained in the mortgage.
6. Avoid or lessen impairment of the owner's credit due to the recording of a notice of default, foreclosure sale or real estate contract forfeiture.
7. Negotiate or obtain a mortgage loan or real estate contract modification, forbearance, repayment plan, or other loss mitigation for the consumer.

“Foreclosure Consultant does not include:

1. The following persons when acting within the scope of their license:
 - Persons licensed to practice law in Iowa.
 - A debt manager licensed under Chapter 533A.
 - A real estate broker or salesperson licensed under Chapter 543B, unless offering services to enable an owner to retain possession of the residence in foreclosure.
 - An accountant licensed under Chapter 542.
 - A mortgage broker, mortgage banker or originator licensed or registered under Chapter 535B
2. Persons or their agents acting under authority of the U.S. Department of Housing and Urban Development (HUD) or other U.S. or State of Iowa Agency.

3. An Iowa or federally chartered financial institution or mortgagee approved by HUD, or their subsidiaries and agents.
4. A person owed an obligation secured by a lien on a residence in foreclosure, not arising due to a foreclosure conveyance, if performing services connected to that obligation or lien.
5. A nonprofit entity that counsels or advises an owner of a residence in foreclosure or loan default, if it does not contract for services with for-profit lenders or foreclosure purchasers.
6. A judgment creditor of the owner, if the claim accrued prior to personal service of the foreclosure notice under section 654.2D, but not a person purchasing the claim after such service.

A Foreclosure Consultant Contract:

1. Must fully disclose the exact nature of services and the total amount and terms of compensation.
2. Contain a notice in at least 14 point bold type that the consultant cannot accept money until completely finishing everything promised, or ask you to sign any lien, mortgage, or real estate contract.
3. Must be dated and signed by the owner.
4. Must state near the signature line, in at least 10 point bold type, that the owner may cancel at any time prior to midnight of the third business day after the date of the transaction.
5. A copy must immediately be provided to the owner, with the required notice of cancellation.
6. The notice of cancellation must:
 - Include the date the owner signed the contract.
 - Explain the right to cancel within three business days.
 - Provide the consultant's real name and physical address to mail or deliver the notice.
7. Cancellation occurs when the owner, by any means, delivers written notice of cancellation to the address specified in the contract. If cancellation is mailed, it is effective upon mailing. If electronically mailed, it is effective upon transmission.
8. A provision requiring arbitration of a dispute is void at the option of the owner.

Prohibitions: The bill prohibits foreclosure consultants from:

1. Accepting compensation until after all services are performed.
2. Charging more than an annual 8% of the amount of any loan made to the homeowner.
3. Taking a property lien, wage assignment, or other security to ensure payment by the homeowner.
4. Accepting third-party payment in connection with services, unless disclosed to the homeowner.
5. Acquiring interest in a home from an owner with whom the consultant contracted.
6. Accepting a power of attorney from an owner, except to inspect documents as provided by law.
7. Inducing an owner to enter into a contract not in compliance with the requirements of this bill.
8. Accepting payment to negotiate a loan or modify a real estate contract without successfully doing so.
9. Trying to prohibit the borrower from contacting any lender, servicer, government entity, or any other person helping the consumer.

Remedies:

1. All remedies under the Iowa's Consumer Fraud Act are available either by an action filed by the Attorney General or by a private action filed by the homeowner.
2. A court shall award the owner actual damages, equitable relief, court costs and attorney fees.
3. A court may award exemplary damages of up to one and one-half time the compensation charged, if it finds that the consultant accepted compensation, security, or consideration from a third party in violation of this chapter or if the consultant acted in bad faith.

Criminal Penalty: A violator of this Act commits a serious misdemeanor, which is a fine of from \$65 to \$650 and/or imprisonment for up to 30 days.