



## HOME EQUITY THEFT PREVENTION ACT

### Your rights under the law

As of February 1, 2007, certain sales of homes that are in foreclosure or default are now governed by a New York State law under the Home Equity Theft Prevention Act.

If you are planning to sell a home that is in foreclosure or default, you should be aware of your rights under the Act, and know what to expect from a legitimate buyer.

If your sale is protected by the law, and your buyer fails to fulfill any of the requirements listed below you may be able to void or legally cancel the contract you have with the buyer and the sale, even after it has been signed and executed. You may also be able to sue the buyer to recover any damages.

**If the sale you are considering falls under the Act (see right), the Banking Department recommends that you not enter into any agreement without first calling the Banking Department's Consumer Helpline at 1-877-BANK-NYS (1-877-226-5697). Helpline staff can give you information about your rights, options and other resources you should consider.**

### **YOU HAVE THE RIGHT TO A COMPLETE CONTRACT**

The contract must be completely filled in, then signed and dated by both you and the buyer. Go over every page of the contract and all attached documents to make sure that it is complete and contains no blank pages or missing information.

Under the Act, the contract must contain ALL of the following information:

- A notice that you are allowed to cancel the contract within five business days of the day that you signed it ("business days" are every day of the week EXCEPT Sundays and federal holidays);
- A cancellation form that you can fill out and return to the buyer in order to cancel the contract;
- The name, business address, and telephone number of the buyer;
- The address of the house that is being sold (i.e., your home);
- The total value of the house that is being sold, plus any other fees or payments you must make to the buyer;
- A complete description of the terms of payment that will be given to you in exchange for the house;
- A complete description of any services the buyer has agreed or promised to perform for you;
- The time at which the house will officially become the property of the buyer;
- The time by which you must move out of the house;
- The terms of any rental or lease agreement (if you plan to continue living in the home as a renter);
- The terms of any buyback or "reconveyance" agreement (if you plan to buy back the home after a period of time);
- If Spanish is your primary language, you have the right to have a copy of your contract and all attached documents provided in Spanish.

### **DOES THIS LAW APPLY TO THE SALE OF YOUR HOME?**

The law generally applies to the sale of a home in foreclosure to a buyer who wants to purchase the home as an investment.

If your home is in default, this law applies to the sale of your home ONLY if there is a "buyback" agreement in your sale contract.

If your home is in foreclosure, this law **DOES NOT APPLY** to the sale of your home if:

- The buyer wants to use the home as a primary residence, and actually does live there full-time after the sale is completed;
- Your home is being sold in a court-ordered foreclosure auction (the end result of the foreclosure process);
- The buyer is a not-for-profit housing organization or a public housing agency;
- The buyer is your spouse, or is your parent, child, grandparent, grandchild, or sibling, or is your spouse's parent, child, grandparent, grandchild, or sibling; or
- The buyer is "bona fide" or buying the home from someone who bought the home from you with no knowledge of or reason to suspect fraud committed against you by your original buyer.

## YOU HAVE THE RIGHT TO CANCEL THE CONTRACT

You have the right to cancel the contract until midnight of the fifth business day after the day that you signed it (see sidebar). The buyer is required to attach a form to the agreement that you can use to cancel the contract. You are not required to use the form, but you **MUST** cancel the contract in writing.

To cancel the contract, detach the form, fill it out, and deliver it within five business days to the buyer's address as listed on the contract, and your contract will be cancelled. If you mail your cancellation, it must be postmarked by midnight of the fifth business day.

### HOW LONG DO I HAVE TO CANCEL MY CONTRACT?

I signed the contract on Monday—I have until midnight on Saturday to cancel  
I signed the contract on Tuesday—I have until midnight on Monday to cancel  
I signed the contract on Wednesday—I have until midnight on Tuesday to cancel  
I signed the contract on Thursday—I have until midnight on Wednesday to cancel  
I signed the contract on Friday—I have until midnight on Thursday to cancel  
I signed the contract on Saturday—I have until midnight on Friday to cancel

Note: Sunday is NOT a business day and public holidays are NOT business days)

### During the cancellation period, your buyer may not:

- Give you any form of payment for any piece of the property or for any service performed;
- Take from you the deed to the house or any other document that would give the buyer part or full ownership of the house. Even if you WANT to give the deed to the buyer before the end of the cancellation period they are not permitted to accept it;
- Entice you in any way to give up the right to cancel the contract or to shorten the cancellation period. The buyer also may not provide any form or document that would allow you to shorten the cancellation period;
- File a record of any document that you have signed, or that would give the buyer part or full ownership of the house, at the county clerk's office (County clerks keep records of important legal documents for the residents of a county, and such documents should be filed only after they become official.);
- Take out a mortgage on the house or any part of it;
- Sell or give ownership of the house or any part of it to another person.

## YOU HAVE THE RIGHT TO AN HONEST BUYER AND A FAIR SALE

If you suspect that your buyer is doing or has done any of the following, the buyer may have committed a felony and the contract may be voidable—you may be able to legally cancel the contract and the sale, even after it has been signed and executed.

Your buyer may not, at any time, deceive or mislead you in any way about any aspect of the sale of the house or about any aspect of a buyback agreement. In particular, your buyer must not:

- Deceive or mislead you in any way about **the value of the house;**
- Deceive or mislead you in any way about **the amount of money you will receive** as a result of the sale;
- Deceive or mislead you in any way about the timing of the foreclosure process, or about **how much time you have** until your home is put up for foreclosure auction by the court;
- Deceive or mislead you in any way about **the terms of any contracts;**
- Deceive or mislead you in any way about **the nature of any document** the buyer asks you to sign;
- Deceive or mislead you in any way about **your rights and responsibilities** before, during, or after the sale of the house.

Equity purchasers often advertise that they want to help you keep your home or avoid foreclosure. Remember—these buyers are in the business of buying homes in foreclosure, and their ultimate goal isn't to lend you a helping hand—it is to make a profit. For this reason, it's illegal for your buyer to represent that:

- He or she is helping you to “save” the house or “prevent” a completed foreclosure, or is “acting on your behalf” as an “advisor” or “consultant” or on behalf of any other homeowner in foreclosure or default;
- He or she is “certified” or “licensed” for a certain activity, when he or she has no such certification or license.

Sometimes the buyer will make a genuine error in the sale proceedings and will accidentally violate the law. If this occurs, the buyer must notify you of the error within 90 days of the day the error occurred, and must pay you back for any extra cost to you that occurred because of the error.

## **WHAT YOU NEED TO KNOW ABOUT BUYBACK OR RECONVEYANCE AGREEMENTS**

The Home Equity Theft Prevention Act permits buyers to offer you a buyback agreement in your sale contract. In a buyback agreement you allow the buyer to take ownership of your home in exchange for a service from the buyer (such as bringing your mortgage current and making your mortgage payments). The buyer retains ownership of the home until a predetermined date, at which time it is expected you will be able to repay the buyer for services provided and mortgage payments made and the deed will be “reconveyed” to you.

While buyback agreements may sound like a viable option and are not illegal, **the Banking Department strongly recommends that you do not sign a contract that contains a buyback agreement of any sort.** Equity buyers offer these agreements in the hopes that you will either choose not to buy back the home, or that you will not be able to afford to buy back the home by the preset date. The buyer only profits when you are unable to or choose not to buy back your home.

Buyers are now required by the Act to make sure that you will have a reasonable ability to afford the terms of a buyback within the proposed time frame. The buyer must consider and verify the following information:

- Your current and expected income;
- Your employment status;
- Your current debts; and
- All other financial resources and assets you have.

**Please note: this “prediction” on the part of the buyer does not guarantee that you will be able to afford to repurchase your home. No one can predict your financial future.**

The law does require that buyers “buy you out” of the home if you choose not to or cannot afford to buy it back. However, the Act only requires that the buyer pay you at least 82% of the home's fair market value. The law also allows the buyer to deduct any debts you still owe to them, including but not limited to:

- Any unpaid rent you've accrued before the date you move out of the house (if you have been leasing the house from the buyer);
- Reasonable cost of any repairs made by the buyer to the house to fix damage you caused beyond reasonable wear and tear;
- Any reasonable costs paid to third parties necessary to complete the reconveyance transaction; and
- Any payments the buyer made for debt or legal obligations of yours.

As you can see, these costs can really chip into the reduced payment you are getting from the buyer. You may not be left with enough money to cover the remaining mortgage debt you still owe on the home.

If you do decide to sign a buyback agreement, the buyer is required by law to do the following:

- Hold a legitimate in-person closing of the contract, with an unbiased lawyer present;
- Make all your rental agreements (if any) fair and reasonably priced;
- Notify your mortgage lender of the agreement and comply with all terms and conditions of your mortgage; and
- Get written consent from you before giving anyone else any “interest” in your home or involving anyone else in the ownership or use of the property.

**If you have questions about your foreclosure or default situation or about the Home Equity Theft Prevention Act please call the Banking Department's Consumer Helpline at 1-877-BANK-NYS (1-877-226-5697).**