

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 123**

Introduced By: Banking, Commerce and Insurance Committee; Pahls, 31,  
Chairperson; Carlson, 38; Christensen, 44; Gay, 14;  
Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4

Read first time: January 8, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to real property; to amend section 87-302,  
2 Revised Statutes Cumulative Supplement, 2006; to adopt the  
3 Nebraska Foreclosure Protection Act; to provide a penalty;  
4 to change provisions relating to the Uniform Deceptive Trade  
5 Practices Act; and to repeal the original section.

6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 28 of this act shall be known and  
2 may be cited as the Nebraska Foreclosure Protection Act.

3           Sec. 2. The Legislature hereby finds, determines, and  
4 declares that home ownership and the accumulation of equity in one's  
5 home provide significant social and economic benefits to the state  
6 and its citizens. Unfortunately, too many homeowners in financial  
7 distress, especially the poor, elderly, and financially  
8 unsophisticated, are vulnerable to a variety of deceptive or  
9 unconscionable business practices designed to dispossess them or  
10 otherwise strip the equity from their homes. There is a compelling  
11 need to curtail and prevent the most deceptive and unconscionable of  
12 these business practices, provide each homeowner with information  
13 necessary to make an informed and intelligent decision regarding  
14 transactions with certain foreclosure consultants and equity  
15 purchasers, provide certain minimum requirements for contracts  
16 between such parties, including statutory rights to cancel such  
17 contracts, and ensure and foster fair dealing in the sale and  
18 purchase of homes in foreclosure. Therefor, it is the intent of the  
19 Legislature that all violations of the Nebraska Foreclosure  
20 Protection Act have a significant public impact and that the terms of  
21 the act be liberally construed to achieve these purposes.

22           Sec. 3. For purposes of the Nebraska Foreclosure Protection  
23 Act, unless the context otherwise requires, the definitions found in  
24 sections 4 to 12 of this act apply.

25           Sec. 4. Associate means a partner, a subsidiary, an  
26 affiliate, an agent, or any other person working in association with a  
27 foreclosure consultant or an equity purchaser. Associate does not

1 include a person who is excluded from the definition of an equity  
2 purchaser or a foreclosure consultant.

3           Sec. 5. Equity purchase contract means an agreement between  
4 an equity purchaser and a homeowner pertaining to the acquisition of  
5 title to the homeowner's personal residence.

6           Sec. 6. Equity purchaser means a person who, in the course  
7 of the person's business, vocation, or occupation, acquires title to a  
8 residence in foreclosure. Equity purchaser does not include a person  
9 who acquires such title:

10           (1) For the purpose of using such property as his or her  
11 personal residence for at least one year;

12           (2) By a deed in lieu of foreclosure to the holder of an  
13 evidence of debt, or an associate of the holder of an evidence of  
14 debt, of a consensual lien or encumbrance of record, if such  
15 consensual lien or encumbrance is recorded in the register of deeds  
16 office of the county where the residence in foreclosure is located  
17 prior to a foreclosure sale;

18           (3) By a deed from any trustee, sheriff, or other person  
19 appointed by a court as a result of a foreclosure sale;

20           (4) At a sale of property authorized by statute;

21           (5) By order or judgment of any court;

22           (6) From the person's spouse, relative, or relative of a  
23 spouse, by the half or whole blood or by adoption, or from a guardian,  
24 conservator, or personal representative of such person; or

25           (7) While performing services as a part of a person's  
26 normal business activities under any law of this state or the United  
27 States that regulates banks, trust companies, savings and loan

1 associations, credit unions, insurance companies, title insurers,  
2 insurance producers, or escrow companies authorized to conduct  
3 business in this state, an affiliate or subsidiary of such person, or  
4 an employee or agent acting on behalf of such person.

5 Sec. 7. Evidence of debt means a writing that evidences a  
6 promise to pay or a right to the payment of a monetary obligation such  
7 as a promissory note; bond; negotiable instrument; loan, credit, or  
8 similar agreement; or monetary judgment entered by a court of  
9 competent jurisdiction.

10 Sec. 8. (1) Foreclosure consultant means a person who:

11 (a) Does not, directly or through an associate, take or  
12 acquire any interest in or title to the residence in foreclosure; and

13 (b) In the course of such person's business, vocation, or  
14 occupation, makes a solicitation, representation, or offer to a  
15 homeowner to perform, in exchange for compensation from the homeowner  
16 or from the proceeds of any loan or advance of funds, a service that  
17 the person represents will do any of the following:

18 (i) Stop or postpone a foreclosure sale;

19 (ii) Obtain a forbearance from a beneficiary under a deed  
20 of trust, mortgage, or other lien;

21 (iii) Assist the homeowner in exercising a right to cure a  
22 default;

23 (iv) Obtain an extension of the period within which the  
24 homeowner may cure a default;

25 (v) Obtain a waiver of an acceleration clause contained in  
26 an evidence of debt secured by a deed of trust, mortgage, or other  
27 lien on a residence in foreclosure or contained in such deed of

1 trust, mortgage, or other lien;

2 (vi) Assist the homeowner to obtain a loan or an advance of  
3 funds;

4 (vii) Avoid or reduce the impairment of the homeowner's  
5 credit resulting from the recording of a notice of election and demand  
6 for sale, commencement of a judicial foreclosure action, or due to  
7 any foreclosure sale or the granting of a deed in lieu of foreclosure  
8 or resulting from any late payment or other failure to pay or perform  
9 under the evidence of debt, the deed of trust, or other lien securing  
10 such evidence of debt;

11 (viii) In any way delay, hinder, or prevent the foreclosure  
12 upon the homeowner's residence; or

13 (ix) Assist the homeowner in obtaining from the  
14 beneficiary, mortgagee, or grantee of the lien in foreclosure, or from  
15 counsel for such beneficiary, mortgagee, or grantee, the remaining or  
16 excess proceeds from the foreclosure sale of the residence in  
17 foreclosure.

18 (2) Foreclosure consultant does not include:

19 (a) A person licensed to practice law in this state while  
20 performing any activity related to the person's attorney-client  
21 relationship with a homeowner or any activity related to the person's  
22 attorney-client relationship with the beneficiary, mortgagee,  
23 grantee, or holder of any lien being enforced by way of foreclosure;

24 (b) A holder or servicer of an evidence of debt or the  
25 attorney for the holder or servicer of an evidence of debt secured by  
26 a deed of trust or other lien on any residence in foreclosure while  
27 the person performs services in connection with the evidence of debt,

1 lien, deed of trust, or other lien securing such debt;

2 (c) A person doing business under any law of this state or  
3 the United States, which law regulates banks, trust companies, savings  
4 and loan associations, credit unions, insurance companies, title  
5 insurers, insurance producers, or escrow companies authorized to  
6 conduct business in the state, while the person performs services as  
7 part of the person's normal business activities, an affiliate or  
8 subsidiary of any of such entities, or an employee or agent acting on  
9 behalf of any of such entities;

10 (d) A person originating or closing a loan in a person's  
11 normal course of business, if, as to that loan:

12 (i) The loan is subject to the requirements of the federal  
13 Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq.,  
14 as the act existed on the effective date of this act; or

15 (ii) With respect to any junior mortgage or home equity  
16 line of credit, the loan is subordinate to and closed simultaneously  
17 with a qualified first mortgage loan under subdivision (2)(d)(i) of  
18 this section or is initially payable on the face of the note or  
19 contract to an entity included in subdivision (2)(c) of this  
20 section;

21 (e) A judgment creditor of the homeowner;

22 (f) A title insurance company or title insurance agent  
23 authorized to conduct business in this state while performing title  
24 insurance and settlement services;

25 (g) A person licensed as a real estate broker, associate  
26 broker, or real estate salesperson pursuant to the Nebraska Real  
27 Estate License Act while the person engages in any activity for which

1 the person is licensed; or

2 (h) A nonprofit organization that solely offers counseling  
3 or advice to homeowners in foreclosure or loan default, unless the  
4 organization is an associate of the foreclosure consultant.

5 Sec. 9. Foreclosure consulting contract means any agreement  
6 between a foreclosure consultant and a homeowner.

7 Sec. 10. Holder of evidence of debt means the person in  
8 actual possession of or otherwise entitled to enforce an evidence of  
9 debt, except that holder of evidence of debt does not include a  
10 person acting as a nominee solely for the purpose of holding the  
11 evidence of debt or deed of trust as an electronic registry without  
12 any authority to enforce the evidence of debt or deed of trust. The  
13 following persons are presumed to be the holder of evidence of debt:

14 (1) The person who is the obligee of and who is in  
15 possession of an original evidence of debt;

16 (2) The person in possession of an original evidence of  
17 debt together with the proper endorsement or assignment thereof to  
18 such person;

19 (3) The person in possession of a negotiable instrument  
20 evidencing a debt which has been duly negotiated to such person or to  
21 bearer or indorsed in blank; or

22 (4) The person in possession of an evidence of debt with  
23 authority, which may be granted by the original evidence of debt or  
24 deed of trust, to enforce the evidence of debt as an agent, a  
25 nominee, or a trustee or in a similar capacity for the obligee of the  
26 evidence of debt.

27 Sec. 11. Homeowner means the owner of a residence in

1 foreclosure, including a vendee under a contract for deed to real  
2 property as defined in subdivision (11) of section 45-702.

3           Sec. 12. Residence in foreclosure means a residence or  
4 dwelling that is occupied as the homeowner's principal place of  
5 residence and against which any type of foreclosure action,  
6 including, but not limited to, the filing of a notice of default of a  
7 deed of trust or the filing of a lawsuit to foreclose a mortgage or  
8 other lien, has been commenced.

9           Sec. 13. (1) A foreclosure consulting contract shall be in  
10 writing and provided to and retained by the homeowner, with changes,  
11 alterations, or modifications, for review at least twenty-four hours  
12 before it is signed by the homeowner.

13           (2) A foreclosure consulting contract shall be printed in  
14 at least twelve-point type and shall include the name, address,  
15 facsimile number, and email address of the foreclosure consultant to  
16 which a notice of cancellation may be delivered and the date the  
17 homeowner signed the contract.

18           (3) A foreclosure consulting contract shall fully disclose  
19 the exact nature of the foreclosure consulting services to be provided  
20 and the total amount and terms of any compensation to be received by  
21 the foreclosure consultant or associate.

22           (4) A foreclosure consulting contract shall be dated and  
23 personally signed, with each page being initialed by each homeowner of  
24 the residence in foreclosure and the foreclosure consultant, and  
25 shall be acknowledged by a notary public in the presence of the  
26 homeowner at the time the contract is signed by the homeowner.

27           (5) A foreclosure consulting contract shall contain the



1 following notice, which shall be printed in at least fourteen-point,  
2 boldface type, completed with the name of the foreclosure consultant,  
3 and located in immediate proximity to the space reserved for the  
4 homeowner's signature:

5 NOTICE REQUIRED BY NEBRASKA LAW

6 \_\_\_\_\_ (NAME OF FORECLOSURE CONSULTANT) OR  
7 (HIS/HER/ITS) ASSOCIATE CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY  
8 DOCUMENT THAT TRANSFERS ANY INTEREST IN YOUR HOME OR PROPERTY TO  
9 (HIM/HER/IT) OR (HIS/HER/ITS) ASSOCIATE.

10 \_\_\_\_\_ (NAME OF FORECLOSURE CONSULTANT) OR  
11 (HIS/HER/ITS) ASSOCIATE CANNOT GUARANTEE YOU THAT THEY WILL BE ABLE TO  
12 REFINANCE YOUR HOME OR ARRANGE FOR YOU TO KEEP YOUR HOME. YOU MAY, AT  
13 ANY TIME, CANCEL THIS CONTRACT, WITHOUT PENALTY OF ANY KIND.

14 IF YOU WANT TO CANCEL THIS CONTRACT, MAIL OR DELIVER A  
15 SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER  
16 WRITTEN NOTICE, INDICATING YOUR INTENT TO CANCEL TO \_\_\_\_\_  
17 (NAME OF FORECLOSURE CONSULTANT) AT \_\_\_\_\_ (ADDRESS OF  
18 FORECLOSURE CONSULTANT, INCLUDING FACSIMILE AND EMAIL ADDRESS).

19 AS PART OF ANY CANCELLATION, YOU (THE HOMEOWNER) MUST REPAY  
20 ANY MONEY ACTUALLY SPENT ON YOUR BEHALF BY \_\_\_\_\_ (NAME OF  
21 FORECLOSURE CONSULTANT) PRIOR TO RECEIPT OF THIS NOTICE AND, AS A  
22 RESULT OF THIS AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH INTEREST AT  
23 THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE BOARD PLUS TWO  
24 PERCENTAGE POINTS, WITH THE TOTAL INTEREST RATE NOT TO EXCEED EIGHT  
25 PERCENT PER YEAR.

26 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE  
27 LOSS OF YOUR HOME. CONTACT AN ATTORNEY OR A HOUSING COUNSELOR APPROVED

1 BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT BEFORE  
2 SIGNING.

3 (6) A completed form in duplicate, captioned NOTICE OF  
4 CANCELLATION, shall accompany a foreclosure consulting contract. The  
5 notice of cancellation shall:

6 (a) Be on a separate sheet of paper attached to the  
7 contract;

8 (b) Be easily detachable; and

9 (c) Contain the following statement, printed in at least  
10 fourteen-point type:

11 NOTICE OF CANCELLATION

12 \_\_\_\_\_ (DATE OF CONTRACT)

13 TO: (NAME OF FORECLOSURE CONSULTANT)

14 (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE AND  
15 EMAIL)

16 I HEREBY CANCEL THIS CONTRACT.

17 \_\_\_\_\_ (DATE)

18 \_\_\_\_\_ (HOMEOWNER'S SIGNATURE)

19 (7) A foreclosure consultant shall provide to the homeowner  
20 a signed, dated, and acknowledged copy of the foreclosure consulting  
21 contract and the attached notice of cancellation immediately upon  
22 execution of the contract.

23 (8) The time during which the homeowner may cancel a  
24 foreclosure consulting contract does not begin to run until the  
25 foreclosure consultant has complied with this section.

26 Sec. 14. (1) In addition to any right of rescission  
27 available under state or federal law, a homeowner has the right to

1 cancel a foreclosure consulting contract at any time.

2 (2) Cancellation occurs when a homeowner gives written  
3 notice of cancellation of the foreclosure consulting contract to the  
4 foreclosure consultant at the address specified in the contract or  
5 through any facsimile or email address identified in the contract or  
6 other materials provided to the homeowner by the foreclosure  
7 consultant.

8 (3) Notice of cancellation, if given by mail, is effective  
9 when deposited in the United States mail, properly addressed, with  
10 postage prepaid.

11 (4) Notice of cancellation need not be in the form provided  
12 with the contract and is effective, however expressed, if it indicates  
13 the intention of the homeowner to cancel the foreclosure consulting  
14 contract.

15 (5) As part of the cancellation of a foreclosure consulting  
16 contract, the homeowner shall repay, within sixty days after the date  
17 of cancellation, all funds paid or advanced in good faith prior to  
18 the receipt of notice of cancellation by the foreclosure consultant  
19 or his or her associate under the terms of the foreclosure consulting  
20 contract, together with interest at the prime rate published by the  
21 Federal Reserve Board plus two percentage points, with the total  
22 interest rate not to exceed eight percent per year, from the date of  
23 expenditure until repaid by the homeowner.

24 (6) Except as provided in subsection (5) of this section,  
25 the right to cancel shall not be conditioned on the repayment of any  
26 funds.

27 Sec. 15. A provision in a foreclosure consulting contract

1 is void as against public policy if the provision attempts or purports  
2 to:

3 (1) Waive any of the rights specified in sections 13 to 18  
4 of this act or the right to a jury trial;

5 (2) Consent to jurisdiction for litigation or choice of law  
6 in a state other than Nebraska;

7 (3) Consent to venue in a county other than the county in  
8 which the residence in foreclosure is located; or

9 (4) Impose any costs or fees greater than the actual costs  
10 and fees.

11 Sec. 16. A foreclosure consultant shall not:

12 (1) Claim, demand, charge, collect, or receive any  
13 compensation until after the foreclosure consultant has fully  
14 performed each and every service the foreclosure consultant  
15 contracted to perform or represented that the foreclosure consultant  
16 would perform;

17 (2) Claim, demand, charge, collect, or receive any interest  
18 or any other compensation for a loan that the foreclosure consultant  
19 makes to the homeowner that exceeds the prime rate published by the  
20 Federal Reserve Board at the time of any loan plus two percentage  
21 points, with the total interest rate not to exceed eight percent per  
22 year;

23 (3) Take a wage assignment, a lien of any type on real or  
24 personal property, or any other security to secure the payment of  
25 compensation;

26 (4) Receive any consideration from a third party in  
27 connection with foreclosure consulting services provided to a

1 homeowner unless the consideration is first fully disclosed in  
2 writing to the homeowner;

3 (5) Acquire an interest, directly, indirectly, or through  
4 an associate, in the real or personal property of a homeowner with  
5 whom the foreclosure consultant has contracted;

6 (6) Obtain a power of attorney from a homeowner for any  
7 purpose other than to inspect documents as provided by law; or

8 (7) Induce or attempt to induce a homeowner to enter into a  
9 foreclosure consulting contract that does not comply in all respects  
10 with sections 13 to 18 of this act.

11 Sec. 17. (1) A foreclosure consultant or associate may not  
12 facilitate or engage in any transaction that is unconscionable given  
13 the terms and circumstances of the transaction.

14 (2)(a) If a court, as a matter of law, finds a foreclosure  
15 consultant contract or any clause of such contract to have been  
16 unconscionable at the time it was made, the court may refuse to  
17 enforce the contract, enforce the remainder of the contract without  
18 the unconscionable clause, or so limit the application of any  
19 unconscionable clause as to avoid an unconscionable result.

20 (b) When it is claimed or appears to the court that a  
21 foreclosure consultant contract or any clause of such contract may be  
22 unconscionable, the parties shall be afforded a reasonable  
23 opportunity to present evidence as to its commercial setting,  
24 purpose, and effect to aid the court in making the determination.

25 (c) In order to support a finding of unconscionability,  
26 there must be evidence of an unreasonable inequality of bargaining  
27 power or other circumstances in which there is an absence of

1 meaningful choice for one of the parties, together with contract  
2 terms that are, under standard industry practices, unreasonably  
3 favorable to the foreclosure consultant or associate.

4       Sec. 18. A foreclosure consulting contract, and all notices  
5 of cancellation provided for therein, shall be written in English and  
6 shall be accompanied by a written translation from English into any  
7 other language principally spoken by the homeowner, certified by the  
8 person making the translation as a true and correct translation of  
9 the English version. The translated version shall be presumed to have  
10 equal status and credibility as the English version.

11       Sec. 19. Every equity purchase contract shall be written in  
12 at least twelve-point, boldface type and fully completed, signed, and  
13 dated by the homeowner and equity purchaser prior to the execution of  
14 any instrument quitclaiming, assigning, transferring, conveying, or  
15 encumbering an interest in the residence in foreclosure.

16       Sec. 20. (1) Every equity purchase contract shall contain  
17 the entire agreement of the parties and shall include the following:

18       (a) The name, business address, telephone number, facsimile  
19 number, and email address of the equity purchaser;

20       (b) The street address and full legal description of the  
21 residence in foreclosure;

22       (c) Clear and conspicuous disclosure of any financial or  
23 legal obligations of the homeowner that will be assumed by the equity  
24 purchaser. If the equity purchaser will not be assuming any financial  
25 or legal obligations of the homeowner, the equity purchase contract  
26 shall so state;

27       (d) The total consideration to be paid by the equity

1 purchaser in connection with or incident to the acquisition by the  
2 equity purchaser of the residence in foreclosure;

3 (e) The terms of payment or other consideration, including,  
4 but not limited to, any services of any nature that the equity  
5 purchaser represents will be performed for the homeowner before or  
6 after the sale;

7 (f) The date and time when possession of the residence in  
8 foreclosure is to be transferred to the equity purchaser;

9 (g) The terms of any rental agreement or lease;

10 (h) The specifications of any option or right to repurchase  
11 the residence in foreclosure, including the specific amounts of any  
12 escrow deposit, downpayment, purchase price, closing costs,  
13 commissions, or other fees or costs;

14 (i) A notice of cancellation as provided in section 22 of  
15 this act; and

16 (j) The following notice, in at least fourteen-point,  
17 boldface type, completed with the name of the equity purchaser,  
18 immediately above the statement required by section 22 of this act:

19 NOTICE REQUIRED BY NEBRASKA LAW

20 UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED,

21 \_\_\_\_\_  
(NAME) OR ANYONE WORKING FOR

22 (NAME) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER  
23 DOCUMENT.

24 The equity purchase contract required by this section  
25 survives delivery of any instrument of conveyance of the residence in  
26 foreclosure, but does not have any effect on persons other than the  
27 parties to the contract or affect title to the residence in

1       foreclosure.

2               Sec. 21. (1) In addition to any right of rescission  
3       available under state or federal law, a homeowner has the right to  
4       cancel an equity purchase contract until midnight of the third  
5       business day following the day on which the homeowner signs a  
6       contract that complies with the Nebraska Foreclosure Protection Act  
7       or until noon on the day before the foreclosure sale of the residence  
8       in foreclosure, whichever occurs first.

9               (2) Cancellation occurs when a homeowner personally  
10       delivers written notice of cancellation to the address specified in  
11       the equity purchase contract or upon deposit of such notice in the  
12       United States mail, properly addressed, with postage prepaid.

13               (3) A notice of cancellation given by a homeowner need not  
14       take the particular form as provided with the equity purchase contract  
15       and, however expressed, is effective if it indicates the intention of  
16       the homeowner not to be bound by the equity purchase contract.

17               (4) In the absence of any written notice of cancellation  
18       from a homeowner, the execution by the homeowner of a deed or other  
19       instrument of conveyance of an interest in the residence in  
20       foreclosure to the equity purchaser after the expiration of the  
21       rescission period creates a rebuttable presumption that the homeowner  
22       did not cancel the equity purchase contract.

23               Sec. 22. (1)(a) The equity purchase contract shall contain,  
24       as the last provision before the space reserved for the homeowner's  
25       signature, a conspicuous statement in at least twelve-point, boldface  
26       type, as follows:

27               YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE



1 WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME BEFORE  
 2 (DATE AND TIME OF DAY). SEE THE ATTACHED NOTICE OF CANCELLATION FORM  
 3 FOR AN EXPLANATION OF THIS RIGHT.

4 (b) The equity purchaser shall accurately specify, within  
 5 the equity purchase contract, the date and time of day on which the  
 6 cancellation right ends.

7 (2) The equity purchase contract shall be accompanied by  
 8 duplicate completed forms, captioned Notice of Cancellation, in at  
 9 least twelve-point, boldface type if the equity purchase contract is  
 10 printed or in capital letters if the equity purchase contract is  
 11 typed, followed by a space in which the equity purchaser shall enter  
 12 the date on which the homeowner executed the equity purchase  
 13 contract. Such form shall:

14 (a) Be attached to the equity purchase contract;

15 (b) Be easily detachable; and

16 (c) Contain the following statement, in at least ten-point  
 17 type if the equity purchase contract is printed or in capital letters  
 18 if the contract is typed:

19 NOTICE OF CANCELLATION

20 \_\_\_\_\_ (ENTER DATE EQUITY PURCHASE CONTRACT  
 21 SIGNED). YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE,  
 22 WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE \_\_\_\_\_  
 23 (ENTER DATE AND TIME OF DAY). TO CANCEL THIS TRANSACTION, PERSONALLY  
 24 DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION IN THE  
 25 UNITED STATES MAIL, POSTAGE PREPAID, TO \_\_\_\_\_, (NAME OF  
 26 PURCHASER) AT \_\_\_\_\_ (STREET ADDRESS OF PURCHASER'S PLACE OF  
 27 BUSINESS) NOT LATER THAN \_\_\_\_\_ (ENTER DATE AND TIME OF

1 DAY). I HEREBY CANCEL THIS TRANSACTION

2 \_\_\_\_\_ (DATE)

3 \_\_\_\_\_ (SELLER'S SIGNATURE).

4 (3) The equity purchaser shall provide the homeowner with a  
5 copy of the equity purchase contract and the attached notice of  
6 cancellation.

7 (4) The time during which the homeowner may cancel the  
8 equity purchase contract does not begin to run until the equity  
9 purchaser has complied with this section.

10 Sec. 23. A transaction in which a homeowner purports to  
11 grant a residence in foreclosure to an equity purchaser by an  
12 instrument that appears to be an absolute conveyance and in which an  
13 option to repurchase is reserved to the homeowner or is given by the  
14 equity purchaser to the homeowner shall be permitted only where all  
15 of the following conditions have been met:

16 (1) The reconveyance contract complies in all respects with  
17 section 20 of this act;

18 (2) The reconveyance contract provides the homeowner with a  
19 nonwaivable, thirty-day right to cure any default of the reconveyance  
20 contract and specifies that the homeowner may exercise this right to  
21 cure on at least three separate occasions during the term of such  
22 reconveyance contract;

23 (3) The equity purchaser fully assumes or discharges the  
24 lien in foreclosure as well as any prior liens that will not be  
25 extinguished by the foreclosure, which assumption or discharge shall  
26 be accomplished without a violation of the terms and conditions of  
27 the liens being assumed or discharged;

1           (4) The equity purchaser verifies and can demonstrate that  
2           the homeowner has or will have a reasonable ability to make the lease  
3           payments and to repurchase the residence in foreclosure within the  
4           term of the option to repurchase under the reconveyance contract. For  
5           purposes of this section, there is a rebuttable presumption that the  
6           homeowner has a reasonable ability to make lease payments and to  
7           repurchase the residence in foreclosure if the homeowner's payments  
8           for primary housing expenses and regular principal and interest  
9           payments on other personal debt do not exceed sixty percent of the  
10           homeowner's monthly gross income; and

11           (5) The price the homeowner must pay to exercise the option  
12           to repurchase the residence in foreclosure is not unconscionable.  
13           Without limitation on available claims under section 26 of this act,  
14           a repurchase price exceeding twenty-five percent of the price at  
15           which the equity purchaser acquired the residence in foreclosure  
16           creates a rebuttable presumption that the reconveyance contract is  
17           unconscionable. The acquisition price paid by the equity purchaser  
18           may include any actual costs incurred by the equity purchaser in  
19           acquiring the residence in foreclosure.

20           Sec. 24. A provision in an equity purchase contract between  
21           an equity purchaser and a homeowner is void as against public policy  
22           if it attempts or purports to:

23           (1) Waive any of the rights specified in sections 19 to 27  
24           of this act or the right to a jury trial;

25           (2) Consent to jurisdiction for litigation or choice of law  
26           in a state other than Nebraska;

27           (3) Consent to venue in a county other than the county in

1 which the residence in foreclosure is located; or

2 (4) Impose any costs or fees greater than the actual costs  
3 and fees.

4 Sec. 25. (1) The equity purchase contract provisions  
5 required by sections 19 to 24 of this act shall be provided and  
6 completed in conformity with such sections by the equity purchaser.

7 (2) Until the time within which the homeowner may cancel  
8 the transaction has fully elapsed, the equity purchaser shall not do  
9 any of the following:

10 (a) Accept from a homeowner an execution of, or induce a  
11 homeowner to execute, an instrument of conveyance of any interest in  
12 the residence in foreclosure;

13 (b) Record with the register of deeds any document,  
14 including, but not limited to, the equity purchase contract, or any  
15 lease, lien, or instrument of conveyance that has been signed by the  
16 homeowner;

17 (c) Transfer or encumber or purport to transfer or encumber  
18 an interest in the residence in foreclosure to a third party; or

19 (d) Pay the homeowner any consideration.

20 (3) Within ten days following receipt of a notice of  
21 cancellation given in accordance with sections 21 and 22 of this act,  
22 the equity purchaser shall return without condition the original  
23 equity purchase contract and any other documents signed by the  
24 homeowner.

25 (4) An equity purchaser shall not make any untrue or  
26 misleading statements of material fact regarding the value of the  
27 residence in foreclosure, the amount of proceeds the homeowner will

1 receive after a foreclosure sale, any equity purchase contract term,  
2 the homeowner's rights or obligations incident to or arising out of  
3 the sale transaction, or the nature of any document that the equity  
4 purchaser induces the homeowner to sign or any other untrue or  
5 misleading statement concerning the sale of the residence in  
6 foreclosure to the equity purchaser.

7           Sec. 26. (1) An equity purchaser or associate may not  
8 facilitate or engage in any transaction that is unconscionable given  
9 the terms and circumstances of the transaction.

10           (2)(a) If a court, as a matter of law, finds an equity  
11 purchase contract or any clause of such contract to have been  
12 unconscionable at the time it was made, the court may refuse to  
13 enforce the equity purchase contract, enforce the remainder of the  
14 equity purchase contract without the unconscionable clause, or so  
15 limit the application of any unconscionable clause as to avoid an  
16 unconscionable result.

17           (b) When it is claimed or appears to the court that the  
18 contract or any clause thereof may be unconscionable, the parties  
19 shall be afforded a reasonable opportunity to present evidence as to  
20 its commercial setting, purpose, and effect to aid the court in  
21 making the determination.

22           (c) In order to support a finding of unconscionability,  
23 there must be evidence of some bad faith overreaching on the part of  
24 the equity purchaser or associate such as that which results from an  
25 unreasonable inequality of bargaining power or under other  
26 circumstances in which there is an absence of meaningful choice for  
27 one of the parties, together with contract terms that are, under

1 standard industry practices, unreasonably favorable to the equity  
2 purchaser or associate.

3 Sec. 27. Any equity purchase contract, rental agreement,  
4 lease, option or right to repurchase and any notice, conveyance, lien,  
5 encumbrance, consent, or other document or instrument signed by a  
6 homeowner shall be written in English and shall be accompanied by a  
7 written translation from English into any other language principally  
8 spoken by the homeowner, certified by the person making the  
9 translation as a true and correct translation of the English version.  
10 The translated version shall be presumed to have equal status and  
11 credibility as the English version.

12 Sec. 28. A person who violates any provision of the  
13 Nebraska Foreclosure Protection Act is guilty of a Class IV felony.

14 Sec. 29. Section 87-302, Revised Statutes Cumulative  
15 Supplement, 2006, is amended to read:

16 87-302. (a) A person engages in a deceptive trade practice  
17 when, in the course of his or her business, vocation, or occupation,  
18 he or she:

19 (1) Passes off goods or services as those of another;

20 (2) Causes likelihood of confusion or of misunderstanding as  
21 to the source, sponsorship, approval, or certification of goods or  
22 services;

23 (3) Causes likelihood of confusion or of misunderstanding as  
24 to affiliation, connection, or association with, or certification by,  
25 another;

26 (4) Uses deceptive representations or designations of  
27 geographic origin in connection with goods or services;

1           (5) Represents that goods or services have sponsorship,  
2 approval, characteristics, ingredients, uses, benefits, or quantities  
3 that they do not have or that a person has a sponsorship, approval,  
4 status, affiliation, or connection that he or she does not have;

5           (6) Represents that goods are original or new if they are  
6 deteriorated, altered, reconditioned, reclaimed, used, or secondhand,  
7 except that sellers may repair damage to and make adjustments on or  
8 replace parts of otherwise new goods in an effort to place such goods  
9 in compliance with factory specifications;

10          (7) Represents that goods or services are of a particular  
11 standard, quality, or grade, or that goods are of a particular style  
12 or model, if they are of another;

13          (8) Disparages the goods, services, or business of another  
14 by false or misleading representation of fact;

15          (9) Advertises goods or services with intent not to sell  
16 them as advertised;

17          (10) Advertises goods or services with intent not to supply  
18 reasonably expectable public demand, unless the advertisement  
19 discloses a limitation of quantity;

20          (11) Makes false or misleading statements of fact concerning  
21 the reasons for, existence of, or amounts of price reductions;

22          (12) Uses or promotes the use of a chain distributor scheme  
23 in connection with the solicitation of business or personal  
24 investments from members of the public;

25          (13) With respect to a sale or lease to a natural person of  
26 goods or services purchased or leased primarily for personal, family,  
27 household, or agricultural purposes, uses or employs any referral or

1 chain referral sales technique, plan, arrangement, or agreement; ~~or~~

2 (14) Knowingly makes a false or misleading statement in a  
3 privacy policy, published on the Internet or otherwise distributed or  
4 published, regarding the use of personal information submitted by  
5 members of the public; or -

6 (15) Violates any provision of the Nebraska Foreclosure  
7 Protection Act.

8 (b) In order to prevail in an action under the Uniform  
9 Deceptive Trade Practices Act, a complainant need not prove  
10 competition between the parties.

11 (c) This section does not affect unfair trade practices  
12 otherwise actionable at common law or under other statutes of this  
13 state.

14 Sec. 30. Original section 87-302, Revised Statutes  
15 Cumulative Supplement, 2006, is repealed.