

CHAPTER 325N

MORTGAGE FORECLOSURES

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FORECLOSURE CONSULTANT CONTRACT RESCISSIONS

325N.01 DEFINITIONS.

The definitions in paragraphs (a) to (h) apply to sections 325N.01 to 325N.09.

(a) "Solicitor" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

(1) stop or postpone a foreclosure sale, a tax forfeiture sale, or a contract for deed termination;

(2) obtain any forbearance from any beneficiary, local unit of government, association of apartment owners, contract for deed seller, or mortgagee regarding:

(i) taxes;

(ii) dues owed to an association of apartment owners; or

(iii) contract for deed, mortgage, or any other payments;

(3) assist the owner to:

(i) exercise the right of reinstatement provided in section 580.30 or the right of redemption provided in section 580.25;

(ii) exercise the right of redemption under chapter 281 or the right to repurchase under sections 282.241 to 282.324;

(iii) cure a default that has resulted in a termination notice issued under section 559.21, subdivision 2a; or

(iv) cure a default that resulted in a lien secured by a common interest community or a master association;

(4) obtain any extension of the period within which the owner may reinstate the owner's obligation;

(5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;

(6) assist the owner in foreclosure, tax forfeiture, or default on a loan, contract for deed payments, or dues owed to an association of apartment owners, to obtain a loan or advance of funds;

(7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default on taxes or any debt secured by the covered residence or the conduct of a foreclosure or tax forfeiture sale;

(8) save the owner's residence from foreclosure, tax forfeiture, or contract for deed termination; or

(9) negotiate or modify the terms or conditions of an existing residential mortgage loan, a repayment agreement on taxes owed, a repurchase agreement of tax-forfeited real property, or a contract for deed.

(b) A solicitor does not include any of the following:

(1) a person licensed to practice law in this state when the person renders service in the course of the person's practice as an attorney-at-law;

(2) a person licensed as a debt management services provider under chapter 332A, when the person is acting as a debt management services provider as defined in that chapter;

(3) a person licensed as a real estate broker or salesperson under chapter 82 when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the covered residence;

(4) a person licensed as an accountant under chapter 326A when the person is acting in any capacity for which the person is licensed under those provisions;

(5) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services;

(6) a person who holds or is owed an obligation secured by a lien on any covered residence when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed property reconveyance;

(7) any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities while engaged in the business of these persons or entities;

(8) a person licensed as a residential mortgage originator or servicer pursuant to chapter 58, when acting under the authority of that license, except that the provisions of sections 325N.01 to 325N.06, 325N.08, and 325N.09 shall apply to any person operating under a mortgage originator license who negotiates or offers to negotiate the terms or conditions of an existing residential mortgage loan;

(9) a nonprofit agency or organization that has tax-exempt status under section 501(c)(3) of the Internal Revenue Code that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or equity purchasers, except that they shall comply with the provisions of section 325N.04, clause (1);

(10) a judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 580.03, but excluding a person who purchased the claim after such personal service;

(11) an equity purchaser as defined in section 325N.10; and

(12) any common interest community association or master association that holds or is owed an obligation secured by a lien on any residence in foreclosure and any employee or agent of either while performing services within the scope of the employment or agency.

(c) "Property reconveyance" means a transaction involving:

(1) the transfer of title to real property by an owner, either by transfer of interest from the owner or by creation of a mortgage or other lien or encumbrance that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder or by other legal process, prior to the expiration of:

(i) the right of reinstatement provided in section 580.30 or the right of redemption of a property provided in section 580.25;

(ii) the right of redemption under chapter 281 or the right to repurchase under sections 282.241 to 282.324;

(iii) the period to cure a default that has resulted in a termination notice issued under section 559.21, subdivision 2a; or

(iv) the period to cure a default that resulted in a lien assessed by a common interest community or a master association; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the owner by the acquirer or a person acting in participation with the acquirer that allows the owner to possess either the covered residence or any other real property, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

(1) debt, budget, or financial counseling of any type;

(2) receiving money for the purpose of distributing it to creditors, vendors, or association of apartment owners in payment or partial payment of any obligation secured by a covered residence;

(3) contacting creditors, vendors, association of apartment owners, or servicers to negotiate or offer to negotiate the terms or conditions of an existing residential mortgage loan, a tax forfeiture redemption or repurchase agreement, or a contract for deed;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a covered residence may:

(i) cure the owner's default and reinstate the owner's obligation pursuant to section 580.30;

(ii) cure the owner's property tax default and redeem the property;

(iii) cure the owner's default on dues owed to an association of apartment owners and release the common interest community or master association's lien; or

(iv) cure the default on a contract for deed and void the purchaser's ability to terminate the contract;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the covered residence;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or

(7) giving any advice, explanation, or instruction to an owner of a covered residence, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the covered residence, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a covered residence, pursuant to a power of sale contained in any mortgage.

(f) "Covered residence" means residential real property where there is a delinquency or default on any loan, tax, or contract for deed payment, association of apartment owner or master association dues, or other debt secured by or attached to the residential real property that:

(i) consists of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence;

(ii) is an apartment, as that term is defined in section 515.02, subdivision 2;

(iii) is the subject of a contract for deed; or

(iv) is real property that is principally used for farming, as defined in section 500.24, subdivision 2, whether or not parcels are contiguous, so long as the owner occupies one of the parcels as the owner's principal place of residence.

(g) "Owner" means the record owner of a covered residence. For the purposes of this chapter, if the residence in foreclosure is subject to a mortgage foreclosure, an owner is the record owner at the time the notice of pendency was recorded, or the summons and complaint served.

(h) "Contract" means any agreement, or any term in any agreement, between a solicitor and an owner for the rendition of any service as defined in paragraph (e).

(i) "Association of apartment owners" has the meaning given in section 515.02, subdivision 5.

(j) "Common interest community" has the meaning given in section 515B.1-103, clause (10).

(k) "Master association" has the meaning given in section 515B.1-103, clause (21).

History: 2004 c 263 s 1,26; 2007 c 57 art 3 s 43; 2007 c 106 s 1,22; 2008 c 341 art 5 s 23; 2009 c 141 s 1; 2013 c 17 s 1; 2015 c 44 s 32; 2015 c 50 s 1; 2021 c 7 s 5

325N.02 RESCISSION OF SOLICITOR CONTRACT.

(a) In addition to any other right under law to rescind a contract, an owner has the right to cancel a solicitor contract until midnight of the third business day after the day on which the owner signs a contract which complies with section 325N.03.

(b) Cancellation occurs when the owner gives written notice of cancellation to the solicitor at the address specified in the contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

History: 2004 c 263 s 2,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23; 2021 c 7 s 6

325N.03 CONTRACT.

(a) Every contract must be in writing and must fully disclose the exact nature of the solicitor's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the solicitor, must be printed immediately above the statement required by paragraph (c):

"NOTICE REQUIRED BY MINNESOTA LAW

..... (Name) or anyone working for him or her
CANNOT:

- (1) Take any money from you or ask you for money until
..... (Name) has completely finished doing everything
he or she said he or she would do; and
- (2) Ask you to sign or have you sign any lien, mortgage, or deed."

(c) The contract must be written in the same language as principally used by the solicitor to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

"You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(d) The notice of cancellation must contain, and the contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) the name and physical address of the solicitor to which the notice of cancellation is to be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An email address may be included, in addition to the physical address; and

(2) the date the owner signed the contract.

(e) Cancellation occurs when the owner delivers, by any means, written notice of cancellation to the address specified in the contract. If cancellation is mailed, delivery is effective upon mailing. If emailed, cancellation is effective upon transmission. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation," which must be attached to the contract, must be easily detachable, and must contain in at least 10-point type the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation; or (2) email a notice of cancellation

to

(Name of solicitor)

at

(Physical address of solicitor's place of business)

.....

(Email address of solicitor's place of business)

NOT LATER THAN MIDNIGHT OF

(Date)

I hereby cancel this transaction

(Date)

.....

(Owner's signature)"

(f) The solicitor shall provide the owner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

(g) The three business days during which the owner may cancel the contract shall not begin to run until the solicitor has complied with this section.

History: 2004 c 263 s 3,26; 2007 c 106 s 2,22; 2008 c 341 art 5 s 23; 2021 c 7 s 7

325N.04 VIOLATIONS.

It is a violation for a solicitor to:

(1) claim, demand, charge, collect, or receive any compensation until after the solicitor has fully performed each and every service the solicitor contracted to perform or represented he or she would perform;

(2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds eight percent per annum of the amount of any loan which the solicitor may make to the owner.

Such a loan must not, as provided in clause (3), be secured by the covered residence or any other real or personal property;

(3) take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;

(5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a covered residence from an owner with whom the solicitor has contracted;

(6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) induce or attempt to induce any owner to enter a contract which does not comply in all respects with sections 325N.02 and 325N.03.

History: 2004 c 263 s 4,26; 2007 c 106 s 3,22; 2008 c 341 art 5 s 23; 2021 c 7 s 8

325N.05 WAIVER NOT ALLOWED.

Any waiver by an owner of the provisions of sections 325N.01 to 325N.09 is void and unenforceable as contrary to public policy. Any attempt by a solicitor to induce an owner to waive the owner's rights is a violation of sections 325N.01 to 325N.09.

History: 2004 c 263 s 5,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23; 2021 c 7 s 9

325N.06 REMEDIES.

(a) A violation of sections 325N.01 to 325N.09 is considered to be a violation of section 325F.69, and all remedies of section 8.31 are available for such an action. A private cause of action under section 8.31 by an owner is in the public interest. An owner may bring an action against a solicitor for any violation of sections 325N.01 to 325N.09. Judgment must be entered for actual damages, reasonable attorney fees and costs, and appropriate equitable relief.

(b) The rights and remedies provided in paragraph (a) are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section must be commenced within six years from the date of the alleged violation.

(c) The court may award exemplary damages up to 1-1/2 times the compensation charged by the solicitor if the court finds that the solicitor violated the provisions of section 325N.04, clause (1), (2), or (4), and the solicitor's conduct was in bad faith.

(d) Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of sections 325N.01 to 325N.09, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by the commissioner of commerce.

History: 2004 c 263 s 6,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23; 2021 c 7 s 10

325N.07 PENALTY.

Any person who commits any violation described in section 325N.04 may, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year or both. Prosecution or conviction for any violation described in section 325N.04 will not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.

History: 2004 c 263 s 7,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23

325N.08 PROVISIONS SEVERABLE.

If any provision of sections 325N.01 to 325N.09 or the application of any of these provisions to any person or circumstance is held to be unconstitutional and void, the remainder of sections 325N.01 to 325N.09 remains valid.

History: 2004 c 263 s 8,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23

325N.09 LIABILITY.

(a) Any provision in a contract which attempts or purports to require arbitration of any dispute arising under sections 325N.01 to 325N.09 is void at the option of the owner.

(b) This section applies to any contract entered into on or after August 1, 2004.

History: 2004 c 263 s 9,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23

FORECLOSURE PURCHASERS**325N.10 DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 325N.10 to 325N.18, the terms defined in this section have the meanings given them.

Subd. 2. **Owner.** "Owner" has the meaning given in section 325N.01, paragraph (g).

Subd. 3. **Property reconveyance.** "Property reconveyance" has the meaning given in section 325N.01, paragraph (c).

Subd. 4. **Equity purchaser.** "Equity purchaser" means a person that has acted as the acquirer in a property reconveyance. Equity purchaser also includes a person that has acted in joint venture or joint enterprise with one or more acquirers in a property reconveyance. An equity purchaser does not include: (i) a natural person who shows that the natural person is not in the business of equity purchasing and has a prior personal relationship with the homeowner of the covered residence, unless a showing of fraud under section 325F.69, subdivision 1, has been made, or (ii) a federal or state chartered bank, savings bank, thrift, or credit union.

Subd. 5. **Resale.** "Resale" means a bona fide market sale of the property subject to the property reconveyance by the equity purchaser to an unaffiliated third party.

Subd. 6. **Resale price.** "Resale price" means the gross sale price of the property on resale.

Subd. 7. **Covered residence.** "Covered residence" has the meaning given in section 325N.01, paragraph (f).

History: 2004 c 263 s 10,26; 2007 c 106 s 4-6,22; 2008 c 341 art 5 s 23; 2015 c 44 s 33,34; 2015 c 50 s 2,3; 2021 c 7 s 11-15

325N.11 CONTRACT REQUIREMENT; FORM AND LANGUAGE.

An equity purchaser shall enter into every property reconveyance in the form of a written contract. Every contract must be written in letters of a size equal to at least 12-point boldface type, in the same language principally used by the equity purchaser and owner to negotiate the sale of the covered residence and must be fully completed and signed and dated by the owner and equity purchaser before the execution of any instrument of conveyance of the covered residence.

History: 2004 c 263 s 11,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23; 2021 c 7 s 16

325N.12 CONTRACT TERMS.

Every contract required by section 325N.11 must contain the entire agreement of the parties and must include the following terms:

- (1) the name, business address, and the telephone number of the equity purchaser;
- (2) the address of the covered residence;
- (3) the total consideration to be given by the equity purchaser in connection with or incident to the sale;
- (4) a complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the equity purchaser represents he or she will perform for the owner before or after the sale;
- (5) the time at which possession is to be transferred to the equity purchaser;
- (6) a complete description of the terms of any related agreement designed to allow the owner to remain in the home, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;
- (7) a notice of cancellation as provided in section 325N.14, paragraph (b); and
- (8) the following notice in at least 14-point boldface type, if the contract is printed or in capital letters if the contract is typed, and completed with the name of the equity purchaser, immediately above the statement required by section 325N.14, paragraph (a):

"NOTICE REQUIRED BY MINNESOTA LAW

Until your right to cancel this contract has ended, (Name) or anyone working for (Name) CANNOT ask you to sign or have you sign any deed or any other document."

The contract required by this section survives delivery of any instrument of conveyance of the covered residence, and has no effect on persons other than the parties to the contract.

History: 2004 c 263 s 12,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23; 2021 c 7 s 17

325N.13 CONTRACT CANCELLATION.

(a) In addition to any other right of rescission, the owner has the right to cancel any contract with an equity purchaser until midnight of the fifth business day following the day on which the owner signs a contract that complies with sections 325N.10 to 325N.15 or until 8:00 a.m. on the last day of the period during which the owner has a right of redemption, whichever occurs first.

(b) Cancellation occurs when the owner delivers, by any means, written notice of cancellation, provided that, at a minimum, the contract and the notice of cancellation must contain a physical address to which notice of cancellation may be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An email address may be provided in addition to the physical address. If cancellation is mailed, delivery is effective upon mailing. If emailed, cancellation is effective upon transmission.

(c) A notice of cancellation given by the owner need not take the particular form as provided with the contract.

(d) Within ten days following receipt of a notice of cancellation given in accordance with this section, the equity purchaser shall return without condition any original contract and any other documents signed by the owner.

History: 2004 c 263 s 13,26; 2007 c 106 s 7,22; 2008 c 341 art 5 s 23; 2021 c 7 s 18

325N.14 NOTICE OF CANCELLATION.

(a) The contract must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before

.....

(Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The equity purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(b) The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in a size equal to a 12-point boldface type if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the owner executes the contract. This form must be attached to the contract, must be easily detachable, and must contain in type of at least 10 points, if the contract is printed or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

.....

(Enter date and time of day)

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice; or (2) email a notice of cancellation to

.....

(Name of purchaser)

at

(Physical address of purchaser's place of business)

.....

(Email address of foreclosure consultant's place of business)

NOT LATER THAN

(Enter date and time of day)

I hereby cancel this transaction

(Date)

.....

(Seller's signature)"

(c) The equity purchaser shall provide the owner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(d) The five business days during which the owner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the equity purchaser has complied with this section.

History: 2004 c 263 s 14,26; 2007 c 106 s 8,22; 2008 c 341 art 5 s 23; 2021 c 7 s 19

325N.15 WAIVER.

Any waiver of the provisions of sections 325N.10 to 325N.18 is void and unenforceable as contrary to public policy except a consumer may waive the five-day right to cancel provided in section 325N.13 if the property is subject to a foreclosure sale within the five business days, and the owner agrees to waive his or her right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

History: 2004 c 263 s 15,26; 2005 c 10 art 1 s 67; 2007 c 106 s 22; 2008 c 341 art 5 s 23; 2021 c 7 s 20

325N.16 LIABILITY.

(a) Any provision in a contract which attempts or purports to require arbitration of any dispute arising under sections 325N.10 to 325N.18 is void at the option of the owner.

(b) This section applies to any contract entered into on or after August 1, 2004.

History: 2004 c 263 s 16,26; 2007 c 106 s 22; 2008 c 341 art 5 s 23

325N.17 PROHIBITED PRACTICES.

An equity purchaser shall not:

(a) enter into, or attempt to enter into, a property reconveyance with an owner unless:

(1) the equity purchaser verifies and can demonstrate that the owner has a reasonable ability to pay for the subsequent conveyance of an interest back to the owner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that an owner is reasonably able to pay for the subsequent conveyance if the owner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60 percent of the owner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard insurance, real estate taxes, and association dues. There is a rebuttable presumption that the equity purchaser has not verified reasonable payment ability if the equity purchaser has not obtained documents other than a statement by the owner of assets, liabilities, and income;

(2) the equity purchaser and the owner complete a closing for any property reconveyance in which the equity purchaser obtains a deed or mortgage from an owner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by a closing agent, as defined in section 82.55, who is not employed by or an affiliate of the equity purchaser, or employed by such an affiliate, and who does not have a business or personal relationship with the equity purchaser other than the provision of real estate settlement services;

(3) the equity purchaser obtains the written consent of the owner to a grant by the equity purchaser of any interest in the property during such times as the owner maintains any interest in the property; and

(4) the equity purchaser complies with the requirements for disclosure, loan terms, and conduct in the federal Home Ownership Equity Protection Act, United States Code, title 15, section 1639, or its implementing regulation, Code of Federal Regulations, title 12, sections 226.31, 226.32, and 226.34, for any property reconveyance in which the owner obtains a vendee interest in a contract for deed, regardless of whether the terms of the contract for deed meet the annual percentage rate or points and fees requirements for a covered loan in Code of Federal Regulations, title 12, sections 226.32 (a) and (b);

(b) fail to either:

(1) ensure that title to the subject dwelling has been reconveyed to the owner; or

(2) make a payment to the owner such that the owner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days of either the eviction or voluntary relinquishment of possession of the dwelling by the owner. The equity purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this 150-day period. The accounting

shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14. For purposes of this provision, the following applies:

(i) there is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the property;

(ii) the time for determining the fair market value amount shall be determined in the property reconveyance contract as either at the time of the execution of the property reconveyance contract or at resale. If the contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within 120 days of the eviction or voluntary relinquishment of the property by the owner. If the contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within 120 days of the eviction or voluntary relinquishment of the property by the owner, the fair market value shall be determined by an appraisal conducted during this 120-day period and payment, if required, shall be made to the owner, but the fair market value shall be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, shall be made to the owner within 15 days of resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make additional payment, shall be made within 15 days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14;

(iii) "consideration" shall mean any payment or thing of value provided to the owner, including unpaid rent or contract for deed payments owed by the owner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the property reconveyance transaction, payment of money to satisfy a debt or legal obligation of the owner, or the reasonable cost of repairs for damage to the dwelling caused by the owner; or a penalty imposed by a court for the filing of a frivolous claim under section 325N.18, subdivision 6, but

(iv) "consideration" shall not include amounts imputed as a down payment or fee to the equity purchaser, or a person acting in participation with the equity purchaser, incident to a contract for deed, lease, or option to purchase entered into as part of the property reconveyance, except for reasonable costs paid to third parties necessary to complete the property reconveyance;

(c) enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(d) represent, directly or indirectly, that:

(1) the equity purchaser is acting as an advisor or a consultant, or in any other manner represents that the equity purchaser is acting on behalf of the owner;

(2) the equity purchaser has certification or licensure that the equity purchaser does not have, or that the equity purchaser is not a member of a licensed profession if that is untrue;

(3) the equity purchaser is assisting the owner to "save the house" or substantially similar phrase; or

(4) the equity purchaser is assisting the owner in preventing a completed foreclosure or forfeiture if the result of the transaction is that the owner will not complete a redemption of the property;

(e) make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including, but

not limited to, statements regarding the value of the covered residence, the amount of proceeds the owner will receive after a sale of the covered residence, any contract term, or the owner's rights or obligations incident to or arising out of the property reconveyance; or

(f) do any of the following until the time during which the owner may cancel the transaction has fully elapsed:

(1) accept from any owner an execution of, or induce any owner to execute, any instrument of conveyance of any interest in the covered residence;

(2) record with the county recorder or file with the registrar of titles any document, including but not limited to, any instrument of conveyance, signed by the owner;

(3) transfer or encumber or purport to transfer or encumber any interest in the covered residence to any third party, provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of sections 325N.10 to 325N.18, and knowledge on the part of any such person or entity that the property was "covered property" does not constitute notice of a violation of sections 325N.10 to 325N.18. This section does not abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the covered property; or

(4) pay the owner any consideration.

History: 2004 c 263 s 17,26; 2007 c 106 s 9,22; 2008 c 341 art 5 s 23; 2015 c 44 s 35; 2015 c 50 s 4; 2021 c 7 s 21

325N.18 ENFORCEMENT.

Subdivision 1. **Remedies.** A violation of sections 325N.10 to 325N.17 is considered to be a violation of section 325F.69, and all the remedies of section 8.31 are available for such an action. A private right of action under section 8.31 by an owner is in the public interest.

Subd. 1a. **Limitation.** Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of sections 325N.10 to 325N.18, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by the commissioner of commerce.

Subd. 2. **Exemplary damages.** In a private right of action under section 8.31 for a violation of section 325N.17, the court may award exemplary damages of any amount. In the event the court determines that an award of exemplary damages is appropriate, the amount of exemplary damages awarded shall not be less than 1-1/2 times the owner's actual damages. Any claim for exemplary damages brought pursuant to this section must be commenced within four years after the date of the alleged violation.

Subd. 3. **Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of sections 325N.10 to 325N.18 are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. No action under this section shall affect the rights in the foreclosed property held by a good faith purchaser for value under sections 507.34, 508.48, 508A.48, or other applicable law.

Subd. 4. **Criminal penalty.** Any equity purchaser who engages in any practice which would operate as a fraud or deceit upon an owner may, upon conviction, be fined not more than \$50,000 or imprisoned not more than one year, or both. Prosecution or conviction for any one of the violations does not bar prosecution or conviction for any other offenses.

Subd. 5. Failure of transaction. Failure of the parties to complete the reconveyance transaction, in the absence of additional misconduct, shall not subject an equity purchaser to the criminal penalties under this section or section 325N.07.

Subd. 6. Stay of eviction action. (a) A court hearing an eviction action against an owner must issue an automatic stay, without imposition of a bond, if a defendant makes a prima facie showing that the defendant:

(1) has (i) commenced an action concerning a property reconveyance; (ii) asserts a defense under section 504B.121 that the property that is the subject of the eviction action is also the subject of a property reconveyance in violation of sections 325N.10 to 325N.17; or (iii) asserts a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice, in connection with a property reconveyance;

(2) owned the covered residence;

(3) conveyed title to the covered residence to a third party upon a promise that the defendant would be allowed to occupy the covered residence or other real property in which the equity purchaser or a person acting in participation with the equity purchaser has an interest and that the covered residence or other real property would be the subject of a property reconveyance; and

(4) since the conveyance, has continuously occupied the covered residence or other real property in which the equity purchaser or a person acting in participation with the equity purchaser has an interest.

For purposes of this subdivision, notarized affidavits are acceptable means of proof to meet the defendant's burden. Upon good cause shown, a defendant may request and the court may grant up to an additional two weeks to produce evidence required to make the prima facie showing.

(b) A court may award to a plaintiff a \$500 penalty upon a showing that the defendant filed a frivolous claim or asserted a frivolous defense.

(c) The automatic stay expires upon the later of:

(1) the failure of the owner to commence an action in a court of competent jurisdiction in connection with a property reconveyance transaction within 90 days after the issuance of the stay; or

(2) the issuance of an order lifting the stay by a court hearing claims related to the property reconveyance.

(d) If, after the expiration of the stay or an order lifting the stay, a court finds that the defendant's claim or defense was asserted in bad faith and wholly without merit, the court may impose a sanction against the defendant of \$500 plus reasonable attorney fees.

History: 2004 c 263 s 18,26; 2007 c 106 s 10,22; 2008 c 341 art 5 s 23; 2021 c 7 s 22-26