

§6198. Prohibited practices

1. Permitted foreclosure reconveyance. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance with a foreclosed homeowner unless:

A. The foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. 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 a homeowner is reasonably able to pay for the subsequent conveyance if the owner's payments on a monthly basis for primary housing expenses and regular principal and interest payments on other personal debt do not exceed 60% 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 foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the foreclosed homeowner of assets, liabilities and income; [PL 2007, c. 596, §1 (NEW).]

B. The foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. 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 who is not employed by or an affiliate of the foreclosure purchaser or employed by such an affiliate and who does not have a business or personal relationship with the foreclosure purchaser other than the provision of real estate settlement services; [PL 2007, c. 596, §1 (NEW).]

C. The foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property; [PL 2007, c. 596, §1 (NEW).]

D. The foreclosure purchaser obtains certification from a counselor with a 3rd-party, nonprofit organization approved by the administrator that the foreclosed homeowner has received counseling on the advisability of the foreclosure reconveyance; and [PL 2007, c. 596, §1 (NEW).]

E. The foreclosure purchaser complies with the requirements for disclosure, loan terms and conduct in Title 9-A, Article 8-A for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, land installment contract or bond for deed, regardless of whether the terms of the contract for deed, land installment contract or bond for deed meet the annual percentage rate or points and fees requirements for a covered loan. [PL 2011, c. 427, Pt. D, §21 (AMD).]

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2. Failure to ensure reconveyance or to pay consideration. A foreclosure purchaser may not fail to either:

A. Ensure that title to the residence in foreclosure has been reconveyed to the foreclosed homeowner; or [PL 2007, c. 596, §1 (NEW).]

B. Make a payment to the foreclosed homeowner in an amount of at least 82% of the fair market value of the property less any payments related to the discharge of an existing mortgage within 150 days of either the eviction or voluntary relinquishment of possession of the residence in foreclosure by the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, including providing written documentation of expenses, within this 150-day period. Expenses may include any payments related to the discharge of an existing

mortgage made by the foreclosure purchaser to 3rd parties on behalf of the foreclosed homeowner. The accounting must be on a form prescribed by the administrator. For purposes of this paragraph:

(1) 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; and

(2) The time for determining the fair market value amount in the foreclosure reconveyance contract must be either at the time of the execution of the foreclosure reconveyance contract or at resale. If the contract states that the fair market value must be determined at the time of resale, the fair market value must be the resale price if it is sold within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner. If the contract states that the fair market value is 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 foreclosed homeowner, the fair market value must be determined by an appraisal conducted during this 120-day period and payment, if required, must be made to the homeowner, but the fair market value must be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, must be made to the foreclosed homeowner 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 must be made within 15 days of resale, including providing written documentation of expenses. The accounting must be on a form prescribed by the administrator. [PL 2007, c. 596, §1 (NEW).]

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3. Unfair or commercially unreasonable terms. A foreclosure purchaser may not enter into repurchase or lease terms as part of the subsequent foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct.

[PL 2007, c. 596, §1 (NEW).]

4. Misrepresentation. A foreclosure purchaser may not represent, directly or indirectly, that:

A. The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the foreclosed homeowner; [PL 2007, c. 596, §1 (NEW).]

B. The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue; [PL 2007, c. 596, §1 (NEW).]

C. The foreclosure purchaser is assisting the foreclosed homeowner in retaining ownership to the residence in foreclosure; or [PL 2007, c. 596, §1 (NEW).]

D. The foreclosure purchaser is assisting the foreclosed homeowner in preventing a completed foreclosure if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property. [PL 2007, c. 596, §1 (NEW).]

[PL 2007, c. 596, §1 (NEW).]

5. False, deceptive or misleading statements. A foreclosure purchaser may not make any 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 residence in foreclosure, the amount of proceeds the foreclosed homeowner may receive after a foreclosure sale, any contract term or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance.

[PL 2007, c. 596, §1 (NEW).]

6. Door-to-door solicitation prohibited. A foreclosure purchaser may not solicit a foreclosure reconveyance door-to-door prior to receiving an invitation from a foreclosed homeowner.

[PL 2007, c. 596, §1 (NEW).]

7. **Other actions.** Until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed, a foreclosure purchaser may not:

A. Accept from any foreclosed homeowner an execution of or induce any foreclosed homeowner to execute any instrument of conveyance of any interest in the residence in foreclosure; [PL 2007, c. 596, §1 (NEW).]

B. Record or file with the county register of deeds any document, including, but not limited to, any instrument of conveyance, signed by the foreclosed homeowner; [PL 2007, c. 596, §1 (NEW).]

C. Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any 3rd party, except that this paragraph may not defeat or affect a grant of interest or encumbrance against a bona fide purchaser or encumbrance for value and without notice of a violation of this chapter. Knowledge on the part of any such person or entity that the property was a residence in foreclosure does not constitute notice of a violation of this chapter. This paragraph does not abrogate any duty of inquiry that exists as to rights or interests of persons in possession of the residence in foreclosure; or [PL 2007, c. 596, §1 (NEW).]

D. Pay the foreclosed homeowner any consideration. [PL 2007, c. 596, §1 (NEW).]
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SECTION HISTORY

PL 2007, c. 596, §1 (NEW). PL 2009, c. 362, Pt. C, §4 (AMD). PL 2011, c. 427, Pt. D, §21 (AMD).

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