

## THE FORECLOSURE CONSULTANT AT YOUR DOOR

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The residential homeowner in default of a loan secured by its residence too often is preyed upon as a terminally ill patient in need of a miracle cure. There are those with good intentions who want to help the troubled homeowner. There are also those who see an opportunity to profit from the misfortunate homeowner. Both types of individuals in the State of California are subject to provisions of the California Civil Code governing the activities of foreclosure consultants.

For anyone contemplating making a profit in the course of assisting one whose personal residence is in default, it is important to understand the definition of a foreclosure consultant and need for a full compliance with California law.

A copy of Civil Code Section 2945-2945.11 ("Foreclosure Consultant Statutes") follows at the end of this article. California's Foreclosure Consultant Statutes clearly, unambiguously and in remarkably plain English, outlines not only what was the intent of the California State Legislature when it enacted the Foreclosure Consultant Statute, but also fully defines who is a "Foreclosure Consultant" and what are restricted activities.

Foreclosure consultants most commonly obtain a deed of trust on the troubled homeowner's residence, and then ultimately either foreclose upon the troubled homeowner's residence, or arrange a "short payoff" of the holder of the loan in default. The bottom line to these transactions is while the foreclosure consultant has represented it will "help save the home" of the troubled homeowner, often times it obtains the home at a discount that it would not have received in an arms length transaction or one entered in good faith.

Even those with good intentions in the mortgage lending business and who might otherwise be in full compliance with the law, need to make statutorily prescribed disclosures when entering a contract with a troubled homeowner designed to "assist" in saving the home. Among disclosures in writing required are that the troubled homeowner has the right for three (3) days to cancel any contract it enters with a Foreclosure Consultant.

Foreclosure consultants are not outlawed in the State of California, but simply required to act in accordance with California law. One who seeks to act as a Foreclosure Consultant is best advised to have a clear understanding of California law, not to "cut corners" or engage in any act restricted by the Foreclosure Consultant Statutes. Failure to comply with the Foreclosure Consultant Statutes may result in not only civil damages to the troubled homeowner, but also criminal liability, including either a fine of up to \$10,000.00 or imprisonment for one (1) year, or both, for *each* violation committed.

[Civil Code Section 2945-2945.11](#) ("Foreclosure Consultant Statues")

*DISCLAIMER: This article is intended to provide a general overview of lending issues. It is not intended nor should it be relied upon as legal advice. Each loan is fact specific and as such different principles of law may apply, counsel should be consulted. For additional information contact Gordon L. Gerson at GERSON LAW FIRM APC, [ggerson@gersonlaw.com](mailto:ggerson@gersonlaw.com) or call (858) 452-5400.*