

Law of Distressed Real Estate  
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Baxter Dunaway

Part M. Jurisdictional Summaries  
Chapter 64. California Practice[FN\*][FN†]  
V. Nonjudicial Foreclosure/Trustee's Sale

[References](#)

§ 64:182. **Homeowner foreclosure consultants**

"Foreclosure consultants" are regulated by Cal. Civ. Code " 2945-2945.11. These statutes are similar to those discussed supra in ' 64:147.2 "Unconscionable home equity purchasers," but they regulate "Foreclosure consultants" as defined in [Cal. Civ. Code ' 2945.1](#) Foreclosure consultants are parties who offer to any owner to perform for compensation to save the owner's home from foreclosure.[FN1]"Residence in foreclosure" means residential real property consisting of one- to four-family dwelling units, one of which the owner occupies as his or her principal place of residence,[FN2]and against which there is an outstanding notice of default.[FN3]Foreclosure consultants do not include for example attorneys rendering service as an attorney, certain licensed lenders, and licensed real estate brokers who make a direct loan to the owner.[FN4]An owner has the right within three days to cancel the contract with the consultant, the contract must be in writing with a prescribed form.[FN5]Certain acts are prohibited including the right to demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he would perform.[FN6]Violations are subject to actual and exemplary damages, attorneys' fees, and equitable relief.[FN7]Fines and imprisonment are possible.[FN8]A real estate broker can act as a "foreclosure consultant" and violate the statute.[FN9]The foreclosure consultant is responsible for damages resulting from the acts or statements made by a representative.[FN10]

[FN\*] By Baxter Dunaway.

[FN†] Nothing contained herein is intended or written to be used, and may not be used, for the purposes of 1) avoiding penalties imposed under the Internal Revenue Code, or 2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

[FN1] [Cal. Civ. Code ' 2945.1\(a\)](#)

[FN2] The statute does not apply if the owner does not occupy when the actions governed by the statute occur. [In re Phelps, 93 Cal. App4th 451, 113 Cal. Rptr.2d 217 \(2001\).](#)

[FN3] [Cal. Civ. Code ' 2945.1\(e\)](#) refers to [Cal. Civ. Code ' 1695.1](#).

[FN4] [Cal. Civ. Code ' 2945.1\(b\)](#).

[FN5] [Cal. Civ. Code ' 2945.3](#)

[FN6] [Cal. Civ. Code ' 2945.4](#).

[\[FN7\] Cal. Civ. Code ' 2945.6.](#)

[\[FN8\] Cal. Civ. Code ' 2945.7.](#)

[\[FN9\] Onofrio v. Rice, 55 Cal App.4th 413, 64 Cal. Rptr.2d 74 \(1997\).](#)

[\[FN10\] Id., Onofrio.](#)

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