

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](#)

§ 64:181. **Unconscionable home equity purchasers**

Civil Code " 1695-1695.17 regulate the purchase of "residence in foreclosure". "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,[FN1] and against which there is an outstanding notice of default.[FN2] Homeowners whose residences are in foreclosure have been subjected to fraud, deception, and unfair dealing by home equity purchasers. During the time period between the commencement of foreclosure proceedings and the scheduled foreclosure sale date, homeowners are vulnerable to equity purchasers who induce homeowners to sell their homes for a small fraction of their fair market values through the use of schemes which often involve oral and written misrepresentations, deceit, intimidation, and other unreasonable commercial practices.[FN3] The statutes provide homeowners with information necessary to make an informed and intelligent decision regarding the sale of his or her home to an equity purchaser; to require that the sales agreement be expressed in writing; to insure, foster, and encourage fair dealing in the sale and purchase of homes in foreclosure; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to afford homeowners an opportunity to rescind sales to equity purchasers.[FN4] It is unlawful to initiate, enter into, negotiate, or consummate any transaction involving residential real property in foreclosure, if the person takes unconscionable advantage of the property owner in foreclosure.[FN5] The equity seller has the right to cancel any contract with an equity purchaser until midnight of the fifth business day following the day on which the equity seller signs a contract or until 8 a.m. on the day scheduled for the sale of the property pursuant to a power of sale, whichever occurs first.[FN6] Any transaction in violation of the statute is voidable.[FN7] Bona fide purchasers and encumbrancers are protected.[FN8] Violators are subject to actual and exemplary damages[FN9] and criminal penalties.[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] The statute does not apply if the owner does not occupy when the actions governed by the statute occur. [In re Phelps, 93 Cal. App. 4th 451, 113 Cal. Rptr.2d 217 \(2001\).](#)

[FN2] [Cal. Civ. Code ' 1695.1\(b\).](#)

[FN3] [Cal. Civ. Code ' 1695.1\(a\).](#)

[\[FN4\] Cal. Civ. Code ' 1695.1\(d\)\(1\).](#)

[\[FN5\] Cal Civ. Code ' 1695.13.](#)

[\[FN6\] Cal Civ. Code ' 1695.4\(a\).](#)

[\[FN7\] Cal Civ. Code ' 1695.14\(a\).](#)

[\[FN8\] Cal Civ. Code ' 1695.14\(c\).](#)

[\[FN9\] Cal Civ. Code ' 1695.7.](#)

[\[FN10\] Cal Civ. Code ' 1695.8.](#)

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