

TAKE JUDICIAL NOTICE

Home Equity Theft Protection Act

January 29, 2007

On February 1, 2007 the Home Equity Theft Protection Act becomes effective in the State of New York. The act effects Section 595-a of the Banking Law, Section 265-a of the Real Property Law, and adds a new section 1303 to the Real Property Actions and Proceedings Law. The Act, a response to the alarming rise in home equity theft across New York State, requires written disclosure to homeowners regarding the terms of a title transfer that occurs when a home is in foreclosure, and provides the homeowner with the right to cancel the deal within five days of signing the agreement. A typical scam unfolds as follows: the predator gets a deed to the property promising that title will be re-conveyed when the distressed homeowner's credit is restored. The predator then refinances the property and cashes out the homeowners equity, and walks away from the property. The Act prohibits making false statements with intent to defraud the homeowner and mandates a consumer education notice to be sent to all homeowners in foreclosure warning them about these types of scams. The Act provides for both civil and criminal penalties for violations. Under the Act, mortgage lenders are required to include with their foreclosure notices relevant information for state agencies who can assist the homeowner printed in English and Spanish on colored paper, and in 12 point bold type print. The notice warns the homeowner about being approached by people offering to "save their home." The notice must follow verbatim the statute. Failure to do so could nullify a foreclosure.

Under the Act, a default exists if a homeowner is two months or more behind in mortgage payments. From a title perspective, RPL 295-a(8)(a) is most disturbing as it makes any transfer that is in material violation of the Act voidable and can be rescinded by the Seller within two years of recording the deed.

The Act affects one to four family dwellings. The Act amends paragraphs (e), (f), (g) of Section 595-a of the Banking Law, and adds a new paragraph (h) thereto. It also adds a new section 265-a to the Real Property Law; and adds a new section 1303 to the RPAPL.