

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 16
CONSUMER FORECLOSURE PROTECTION ACT

45-1601. LEGISLATIVE FINDINGS. The legislature finds that some persons and businesses are engaging in patterns of conduct that defraud innocent homeowners of their title, equity interest, or other value in residential dwellings under the guise of stopping or postponing a foreclosure sale. The legislature also finds this activity to be contrary to the public policy of this state and therefore establishes notice requirements governing contracts or agreements entered into during the foreclosure period. The legislature further finds that the provisions of this chapter shall be construed in such a manner that it does not inhibit transactions with legitimate lenders and investors.

[45-1601, added 2008, ch. 192, sec. 1, p. 601.]

45-1602. CONTRACT NOTICE. (1) During the foreclosure period described in section [45-1506](#), Idaho Code, any contract or agreement with the owner or owners of record that involves the transfer of any interest in residential real property, as defined in section [45-525](#)(5)(b), Idaho Code, subject to foreclosure must be in writing and must be accompanied by and affixed to the following notice in twelve (12) point boldface type and on a separate sheet of paper no smaller than eight and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

You may find helpful information online. One excellent source is the Department of Housing and Urban Development (HUD) website which can be found at "<http://www.hud.gov/foreclosure/index.cfm>". HUD also maintains on its website a list of approved housing counselors who can provide free information to assist homeowners with financial problems. Another good source of information is found at the Office of the Attorney General's website at "<http://www2.state.id.us/ag/>".

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in

property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option."

(2) If during the foreclosure period described in section [45-1506](#), Idaho Code, any contract or agreement that involves the transfer of any interest in residential real property, as defined in section [45-525](#)(5)(b), Idaho Code, was solicited, negotiated, or represented to the consumer in the Spanish language, the written notice to be provided to the consumer and set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

[45-1602, added 2008, ch. 192, sec. 1, p. 601; am. 2009, ch. 136, sec. 2, p. 418.]

45-1603. RIGHT OF RESCISSION OF CONTRACT. (1) In addition to any other legal right to cancel or rescind a contract, any person whose property is in foreclosure as described in section [45-1505](#), Idaho Code, has the right to cancel or rescind any and all contracts or agreements relating to such property entered into during the foreclosure period within five (5) business days of entering into such contract or agreement. Neither funds nor an interest in the property shall be transferred or transferable until the five (5) days have passed.

(2) Cancellation occurs when such person gives written notice of cancellation to all other parties to the contract. Notice of cancellation need not take any particular form and, however expressed, is effective if it indicates the intention not to be bound by the contract.

(3) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the contract or agreement, shall be conclusive proof of notice of service.

[45-1603, added 2008, ch. 192, sec. 1, p. 602.]

45-1604. EXCLUSIONS. The provisions of this chapter shall not apply to:

- (1) Regulated lenders, as defined in section [28-41-301](#), Idaho Code;
- (2) Any person licensed or chartered under the laws of any state or of the United States as a bank, trust company, savings and loan association, credit union, or industrial loan company. The terms "bank," "trust company," "savings and loan association," "credit union" and "industrial loan company" shall include affiliates or wholly owned subsidiaries of such organizations, provided that the affiliate or subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes;
- (3) Mortgage lenders and mortgage brokers licensed under the Idaho residential mortgage practices act, sections [26-31-101](#) et seq., Idaho Code;
- (4) Employees and agents of the organizations specified in subsections (1), (2) and (3) of this section, when acting within the scope of such employment or agency; and
- (5) Family member or members of the owner or owners of record of any interest in residential real property subject to foreclosure. For purposes of this chapter, "family member or members" means a natural person or the spouse of a natural person who is related to such owner or owners of record by blood,

adoption or marriage within the second degree of consanguinity or a grandchild or the spouse of a grandchild.

[45-1604, added 2008, ch. 192, sec. 1, p. 602; am. 2013, ch. 54, sec. 15, p. 122; am. 2015, ch. 244, sec. 27, p. 1022.]

45-1605. PENALTIES. In addition to any other penalty provided by law, any person who violates the provisions of this chapter shall be liable for penalties and damages in accordance with [chapter 6, title 48](#), Idaho Code.

[45-1605, added 2008, ch. 192, sec. 1, p. 603.]

CHAPTER 17
NONCONSENSUAL COMMON LAW LIENS-- [REPEALED]