

58-2342. Home equity protection; terms, in writing; subject to rescission, when; form; voidable, when. Any assignment or transfer of the rights of the defendant owner in relation to real property which is the subject of a pending action to foreclose one or more mortgages and which is the residence of the owner is subject to the following requirements unless such transfer or assignment is made to the mortgagee or its wholly owned subsidiary as a deed in lieu of foreclosure with all rights of deficiency waived, or to a party who then resides in and uses the property as the party's residence:

(a) All such transfers or assignments shall be in writing. All terms, conditions and agreements in consideration for the transfer or assignment shall be set out in detail in a written agreement, dated, and signed by all parties to the agreement. Copies of both the agreement and disclosure statement shall be provided to the transferor or assignor by the transferee or assignee.

(b) All such transfers or assignments, as described in subsection (a), are subject to rescission by the defendant owner within five business days, as defined by K.S.A. 45-217, and amendments thereto, of the date of the defendant owner's execution of the agreement. Such rescission, if made, shall be in writing, signed by the defendant owner, or by any one of the defendant owners if there be more than one, and mailed to the buyer by certified mail. This right of rescission may not be waived, sold or abrogated in any way.

(c) All such agreements, as described in subsection (a), to be effective, must contain a disclosure statement which shall be signed by all parties to the agreement and which shall be substantially in the following form:

NOTICE. READ ALL OF THIS DISCLOSURE STATEMENT CAREFULLY BEFORE SIGNING IT. YOU HAVE A RIGHT TO CONSULT WITH AN ATTORNEY OR ANOTHER PERSON BEFORE SIGNING IT. YOU ARE SELLING OR GIVING UP IMPORTANT RIGHTS.

I, (owner's name), as the owner of (legal description of the property being foreclosed) commonly known as (address of such property), have entered into an agreement with (buyer's name) for the sale of the above-mentioned property which is my residence. I realize I have the following rights:

(1) Should this property be in foreclosure on any mortgage, I am entitled to a period of redemption following the sale in foreclosure proceedings during which period I have the right to redeem the residence. This period could be from six months to 12 months, depending on the amount of the mortgage, the unpaid balance thereof and value of the residence.

(2) During the period of redemption I have the right to remain in my residence or rent it to others.

(3) I have the right to sell my rights to my residence.

(4) If I have paid mortgage guaranty insurance premiums, I may have other rights under the terms of the insurance agreement or under applicable state or federal law.

(5) I ALSO HAVE THE RIGHT TO RESCIND ANY SALES AGREEMENT OR DEED WITH THE BUYER WITHIN FIVE BUSINESS DAYS, AS DEFINED BY K.S.A. 45-217, AND AMENDMENTS THERETO, AFTER THE SIGNING OF THE AGREEMENT OR DEED. I CANNOT AGREE TO GIVE UP OR SELL THIS RIGHT IN ANY WAY.

(6) Everything that is being promised to me or given to me for the purchase of my rights must be in the agreement signed by us. This includes the amount being paid me and any agreement concerning what efforts will be made by the buyer to bring the mortgage payments up to date and any promises concerning what will be done with any proceeds from the renting or selling of the property. Anything not in the written agreement might not be enforceable.

(7) IF I SELL MY RIGHTS AND THE RESIDENCE IS FORECLOSED UPON, I MAY STILL BE RESPONSIBLE FOR ANY AMOUNTS STILL OWED ON THE RESIDENCE IF ITS SALE DOES NOT RAISE ENOUGH TO COVER THE ENTIRE MORTGAGE AND THE FORECLOSURE COSTS. IF THE RESIDENCE IS FORECLOSED UPON, IT IS LIKELY THAT THIS WILL BE REPORTED TO THOSE WHO KEEP CREDIT HISTORIES AND THIS MIGHT INJURE MY CREDIT RATING.

(8) I realize this is a serious matter and that I may wish to consult with an attorney to make sure my important rights in my residence are being protected before signing any agreement.

(9) This provision is not intended to deprive the homeowner of any other right under the law.

OWNER-SELLER

OWNER-SELLER

I ACKNOWLEDGE THAT THE OWNER-SELLER'S RECISSION OF THE AGREEMENT IF MADE PURSUANT TO PARAGRAPH (5) ABOVE, MAY BE MAILED WITHIN FIVE BUSINESS DAYS TO ME BY CERTIFIED MAIL AT THE FOLLOWING ADDRESS:

(BUYER'S ADDRESS)

BUYER

(d) Failure to comply with the pertinent provisions of this section shall render the transfer or assignment voidable at the election of the transferor.

History: L. 1990, ch. 197, § 1; July 1.