325N.17 PROHIBITED PRACTICES.

An equity purchaser shall not:

(a) enter into, or attempt to enter into, a property reconveyance with an owner unless:

(1) the equity purchaser verifies and can demonstrate that the owner has a reasonable ability to pay for the subsequent conveyance of an interest back to the owner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that an owner is reasonably able to pay for the subsequent conveyance if the owner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60 percent of the owner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard insurance, real estate taxes, and association dues. There is a rebuttable presumption that the equity purchaser has not verified reasonable payment ability if the equity purchaser has not obtained documents other than a statement by the owner of assets, liabilities, and income;

(2) the equity purchaser and the owner complete a closing for any property reconveyance in which the equity purchaser obtains a deed or mortgage from an owner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by a closing agent, as defined in section 82.55, who is not employed by or an affiliate of the equity purchaser, or employed by such an affiliate, and who does not have a business or personal relationship with the equity purchaser other than the provision of real estate settlement services;

(3) the equity purchaser obtains the written consent of the owner to a grant by the equity purchaser of any interest in the property during such times as the owner maintains any interest in the property; and

(4) the equity purchaser complies with the requirements for disclosure, loan terms, and conduct in the federal Home Ownership Equity Protection Act, United States Code, title 15, section 1639, or its implementing regulation, Code of Federal Regulations, title 12, sections 226.31, 226.32, and 226.34, for any property reconveyance in which the owner obtains a vendee interest in a contract for deed, regardless of whether the terms of the contract for deed meet the annual percentage rate or points and fees requirements for a covered loan in Code of Federal Regulations, title 12, sections 226.32 (a) and (b);

(b) fail to either:

(1) ensure that title to the subject dwelling has been reconveyed to the owner; or

(2) make a payment to the owner such that the owner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days of either the eviction or voluntary relinquishment of possession of the dwelling by the owner. The equity purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this 150-day period. The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14. For purposes of this provision, the following applies:

(i) there is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the property;

(ii) the time for determining the fair market value amount shall be determined in the property reconveyance contract as either at the time of the execution of the property reconveyance contract or at resale. If the contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within 120 days of the eviction or voluntary relinquishment of the property by the owner. If the contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within 120 days of the eviction or voluntary relinquishment of the property by the owner, the fair market value shall be determined by an appraisal conducted during this 120-day period and payment, if required, shall be made to the owner, but the fair market value shall be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, shall be made to the owner within 15 days of resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make additional payment, shall be made within 15 days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14;

(iii) "consideration" shall mean any payment or thing of value provided to the owner, including unpaid rent or contract for deed payments owed by the owner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the property reconveyance transaction, payment of money to satisfy a debt or legal obligation of the owner, or the reasonable cost of repairs for damage to the dwelling caused by the owner; or a penalty imposed by a court for the filing of a frivolous claim under section 325N.18, subdivision 6, but

(iv) "consideration" shall not include amounts imputed as a down payment or fee to the equity purchaser, or a person acting in participation with the equity purchaser, incident to a contract for deed, lease, or option to purchase entered into as part of the property reconveyance, except for reasonable costs paid to third parties necessary to complete the property reconveyance;

(c) enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(d) represent, directly or indirectly, that:

(1) the equity purchaser is acting as an advisor or a consultant, or in any other manner represents that the equity purchaser is acting on behalf of the owner;

(2) the equity purchaser has certification or licensure that the equity purchaser does not have, or that the equity purchaser is not a member of a licensed profession if that is untrue;

(3) the equity purchaser is assisting the owner to "save the house" or substantially similar phrase; or

(4) the equity purchaser is assisting the owner in preventing a completed foreclosure or forfeiture if the result of the transaction is that the owner will not complete a redemption of the property;

(e) make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including, but not limited to, statements regarding the value of the covered residence, the amount of proceeds the owner will receive after a sale of the covered residence, any contract term, or the owner's rights or obligations incident to or arising out of the property reconveyance; or

(f) do any of the following until the time during which the owner may cancel the transaction has fully elapsed:

(1) accept from any owner an execution of, or induce any owner to execute, any instrument of conveyance of any interest in the covered residence;

(2) record with the county recorder or file with the registrar of titles any document, including but not limited to, any instrument of conveyance, signed by the owner;

(3) transfer or encumber or purport to transfer or encumber any interest in the covered residence to any third party, provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of sections 325N.10 to 325N.18, and knowledge on the part of any such person or entity that the property was "covered property" does not constitute notice of a violation of sections 325N.10 to 325N.18. This section does not abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the covered property; or

(4) pay the owner any consideration.

History: *2004 c 263 s 17,26; 2007 c 106 s 9,22; 2008 c 341 art 5 s 23; 2015 c 44 s 35; 2015 c 50 s 4; 2021 c 7 s 21*