

HOME EQUITY SALES CONTRACTS

The Pinnacle

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Homeowners that are in default under their mortgages but that have equity in their houses have special protection under California state law. The Home Equity Sales Contracts law is located in the California Civil Code Section 1695, et seq. and protects homeowners that find themselves in this situation. Although most homeowners in foreclosure have negative equity in their properties, there are still some homeowners in default that have positive equity but that are still subject to the same financial stresses imposed on any homeowner that has defaulted in their mortgage. The Home Equity Sales Contracts law is designed to protect these homeowners from being taken advantage of or otherwise swindled by investors from buying property at only a fraction of the homeowner's equity in the property.

Under this law, any sales contract between a defaulting homeowner that has positive equity in their house and a purchaser must contain the following information: the name, address and phone number of the purchaser; the address of the residence in foreclosure; the purchase price for the property; a complete description of the payment terms or other consideration to be paid to the homeowner; the closing date for the purchase; the terms of any rental agreement; a notice of cancellation; and language stating that the homeowner does not have to sign any deed to the purchaser until the homeowner's statutory right to cancel the contract has expired.

The homeowner may cancel the contract until midnight on the fifth business day after signing the contract or until 8:00 a.m. on the day scheduled for the sale of the property, whichever occurs first. The legislature enacted these specific requirements so as to give the homeowner as much protection as possible.

A recent California case entitled *Capon v. Monopoly Game, LLC*, 193 Cal.App. 4th 344 (2011) interpreted this law in favor of the homeowner. In this case, the homeowner had approximately \$300,000 equity in his house at the time he was in foreclosure. The purchaser agreed to pay the homeowner \$100,000 for his equity interest in the property plus \$50,000 if he moved out by a particular date. They prepared a one-page contract that did not comply with the Home Equity Sales Contracts law. The escrow closed and the purchaser acquired title to the property. The purchaser then sold the property to a third party and made approximately \$300,000 in profit. The homeowner sued.

The trial court ruled that the defendant purchaser did not violate the Home Equity Sales Contracts law. The defendant purchaser had argued that the protections of the Home Equity Sales Contracts law did not apply because the defendant purchaser fell within one of the exceptions: the defendant purchaser argued that it acquired the property to use it as a personal residence. In this case, the purchaser was a company called Monopoly Game, LLC, which was

owned by Sidney Gladney. Gladney argued that he was going to reside in the home as his primary residence and therefore he should be exempt from this law.

The appellate court ruled that even though Gladney was the owner of Monopoly Game, LLC, Monopoly Game, LLC was not the same as Gladney and therefore the exception did not apply. The appellate court may have also noticed that Gladney's Monopoly Game, LLC was in the business of buying and selling homes like this and that Monopoly Game, LLC did in fact turn around and sell this home instead of Gladney moving into it as his primary residence.

The appellate court in this case clearly did not like the defendant purchaser and was primarily motivated to protect the rights of the homeowner. The appellate court looked to the legislative intent in enacting the Home Equity Sales Contracts law to reach this determination. In these difficult economic times, courts are always going to enforce the law but if there is an ambiguity in the law, then some courts certainly are sympathetic to homeowners and they do not like homeowners being unfairly taken advantage of. In this case, the plaintiff got back the \$300,000 profit that the defendant made off the plaintiff's property. This is a good cautionary case for both homeowners that are looking to sell their property and for investors that may be purchasing properties from people that are in foreclosure. It is clear that both sides in any such transaction must clearly understand the law and should have a knowledgeable real estate broker or attorney involved in advising them on any such transaction.

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