



## New York Underwriting Bulletin

From: Michael Kelly, New York State Counsel

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Name: Home Owner's Theft Prevention Act

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The Home Equity Theft Prevention Act, (RPL 265-a) was enacted to prevent homeowners from being taken advantage of by individuals who claim to have a plan to save the homeowner from foreclosures of mortgages and tax liens. The consequences of a violation of this statute by the purchaser are severe, including rescission of the deed.

### **Applicability of the Statute:**

The statute applies to residential real property, defined as a 1-4 family dwelling, one of which units the "equity seller" occupies or occupied as his or her primary residence immediately before the sale.

An "equity seller" is a natural person, who owns, in whole or in part, residential real property in default or foreclosure at the time of the sale. Default means that the seller is two or more months in mortgage payments.

A covered contract is a contract or agreement to sell or convey the residential real property of an equity seller to an equity purchaser. It must contain certain language in order for the seller to be prevented from rescinding the sale at a later date.

An equity purchaser is a person or entity acquiring title to a residence in foreclosure or default. There are several exceptions to this definition, detailed in the required affidavits attached.

### **Underwriting Guidelines:**

If the property is vacant land, or is improved by a structure other than a 1-4 family residential structure, or the seller is an entity other than a natural person, the statute does not apply.

If the property is being sold by a referee in a mortgage or tax lien foreclosure, the statute does not apply.

In all other cases, you must raise the following exception:

"Subject to the provisions of the Home Owner's Theft Prevention Act (Real Property Law Section 265-a)".

If your search discloses an action to foreclose a mortgage or a tax lien, or a pending tax lien sale, you must raise an additional exception:

“The examination of title discloses one or more mortgage or tax lien foreclosure actions, or an open tax lien or pending tax lien sale. A copy of the contract of sale must be provided prior to closing for review as to compliance with the Home Owners’ Equity Theft Prevention Act.”

**Omitting the exceptions:**

The exceptions may be omitted if we have proof that the buyer and/or seller are not “equity sellers” or “equity purchasers” as defined by the statute. To accomplish this you must have the buyer or sellers, ideally both, execute the attached buyers and sellers affidavits. These affidavits must be carefully and completely filled out.

If both buyer and seller are unable to execute the affidavits, we have a situation of a covered contract. A copy of the contract must be submitted to underwriting counsel for review prior to closing.

**All other New York underwriting memos and affidavits may be accessed at the New York section of our Underwriting Library.**

<http://wfgunderwriting.com/new-york/>

Please contact underwriting counsel with any questions.