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13 **ARIZONA SUPERIOR COURT**

14 **COUNTY OF PIMA**

15 State of Arizona, ex rel. Terry Goddard,  
16 Attorney General,

17 Plaintiff,

18 vs.

19 Deed and Note Traders, L.L.C.,

20 Defendant.

No. \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE AND  
OTHER RELIEF

(Unclassified Civil)

21 **JURISDICTION AND VENUE**

22 1. The State of Arizona brings this action pursuant to the Arizona  
23 Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, to obtain restitution, injunctive relief,  
24 civil penalties, attorneys' fees and costs, investigative expenses and other relief to  
25 prevent the unlawful acts and practices alleged in this Complaint and to remedy the  
26 consequences of such unlawful practices.

27 2. Venue is proper in Pima County, Arizona.

28 3. The Superior Court has jurisdiction to enter appropriate orders both prior  
to and following a determination of liability pursuant to A.R.S. § 44-1528.

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**PARTIES**

4. Plaintiff is the State of Arizona, ex rel. Terry Goddard, who is authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*

5. Defendant, Deed and Note Traders, LLC, is an Arizona limited liability company. David A. Kinas and The David A. Kinas Exempt Trust are each 50% members.

6. When reference is made to Deed and Note Traders, LLC, the reference applies to DNT, its members, David A. Kinas and The David A. Kinas Exempt Trust and all officers, managers, employees, independent contractors and agents of DNT (referred to collectively as “DNT”).

**ALLEGATIONS**

**Foreclosure Assistance**

7. DNT’s “HomeSavers” program offered consumers facing foreclosure a purportedly simple way to save their homes. Consumers would sell their homes to DNT; rent back their former homes from DNT; and, after approximately two years, re-purchase their homes from DNT. DNT’s HomeSavers program was deceptive. Consumers did sell their homes to DNT for a *de minimus* amount; consumers paid exorbitant rent to DNT until they could not pay one more month’s rent; and, DNT then evicted the consumers from their homes.

8. Among other matters, beginning in as early as 1998, DNT began advertising “HomeSavers Foundation of Arizona” by letter and through flyers, over the internet, and through direct contact with homeowners. At some point before April, 2003, DNT dropped “Foundation” from its name and became “HomeSavers, A Division of D.N.T.”

1 9. DNT's various advertisements and letters to consumers explained the  
2 HomeSavers program. For example, but without limitation, the following are DNT's  
3 HomeSavers messages:

4 a. June, 1998: [HomeSavers] **LETTER OF APPROVAL**

5  
6 Thank you for your interest in **HomeSavers Foundation of**  
7 **Arizona (HSF)**. We are pleased to inform you that after our initial  
8 research and review, you have been approved for our **Level One**  
9 **Foreclosure Assistance Program [L-1-FAP]**. The following is an  
overview of the program .... Upon your acceptance and approval,  
**HSF** will:

- 10 1. Pay-Off In-Full **all parties** who have liens on the property.  
11 All of your debts on the property will be PAID IN FULL and  
12 wiped clean.  
13 2. STOP THE FORECLOSURE!  
14 3. Salvage your credit.  
15 4. Give you ... CASH.  
16 5. Allow you to re-purchase property via LEASE OPTION  
AGREEMENT.  
17 6. Give you 2 Months Payment FREE should you wish the  
18 LEASE OPTION AGREEMENT.  
19 7. Pay 100% of all closing costs.  
20 (Emphases original.)

21 b. May, 2001: **HomeSavers Foundation of Arizona**  
22 **SOLUTIONS TO FINANCIAL TROUBLES**

23 I've sent this letter to you to let you know we can still help you out  
24 of your unfortunate situation.

25 **HomeSaver's "Fresh Start" PROGRAM** – Sell your home to us  
26 and BUY IT BACK – YOU DON'T HAVE TO MOVE. **Regardless**  
27 **of your credit rating, foreclosures or even bankruptcies**, we  
28 will provide you with the following options:

- **Buy it back via a Lease Purchase Agreement**
- Rent it back
- ... We are a local company with a track record that includes the completion of over 200 properties here in the Tucson area.

(Emphases original.)

29 c. August, 2003: **HomeSavers (A Division of D.N.T.)**  
30 **FREE CONSULTATION WITH A FORECLOSURE SPECIALIST**

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Dear Head of Family:

Public records show that a foreclosure has already started on this property [sic] therefore we have to move quickly. But, since I don't have your telephone number, you'll have to call me! ALL OF OUR DISCUSSIONS ARE STRICTLY CONFIDENTIAL.

Today, more and more people are finding themselves facing foreclosure against their home [sic]. Many of these people, like yourself [sic] don't know what to do or what rights they have regarding a foreclosure. This is why HomeSavers offers **FREE FORECLOSURE CONSULTATIONS** with a FORECLOSURE SPECIALIST, who *knows* the "In's and Out's" [sic] of foreclosures.

I have been personally involved in stopping or postponing thousands [sic] foreclosures here in Tucson alone....  
(Emphases original.)

d. February, 2004: [HomeSavers] **LAST MINUTE SOLUTIONS TO PENDING FORECLOSURE SALE**

...  
**HOMESAVER'S "FRESH START" PROGRAM** - Sell your home to us and BUY IT BACK LATER – YOU DON'T HAVE TO MOVE. **Regardless of your credit rating**, this program has the following options:

**MOST POPULAR PROGRAMS IN PIMA COUNTY**

**A. Rent It Back Either with or Without a Repurchase Option**

- Avoid Realtor [sic] commissions and traditional seller closing costs by dealing directly with HomeSavers (buyers). We will pay All [sic] closing, title, loan, and recording fees.
- Keep you and your family under the same roof top (same schools for your children).
- Enjoy immediate CASH for Selling [sic] us this property.
- Enjoy a fresh new monthly payment to HomeSavers for continued residency in this property.

(Emphases original.)

e. March, 2006: [HomeSavers] **IDEAS TO ASSIST FAMILIES FACING FORECLOSURE:**

- Reinstate the Loan on your own
- Use of savings planned for retirement and/or emergency
- Borrow against 401k plan

- 1 Borrow against Life insurance policy
- 2 Borrow against other assets (car, boat, RV)
- 3 Apply for low interest credit card
- 4 Seek help from friends or family
- 5 Seek help from charity, or your church
- 6 Seek overtime work and/or side job
- 7 Request an IRS rapid refund on your taxes
- 8 Sell other assets to generate cash. Place your ad in TNI.

9 **Attempt a work-out a [sic] solution with your lender:**  
10 Make a written request for partial payment offer.  
11 See if they would agree to negative amort [sic]. Arrears.  
12 Ask them for a 30, 60-days extra to list and sell the house.

9 **HOMESAVERS of Tucson – Services We Offer.**

- 10 **Refinance your present Loan(s) ....**
- 11 **Borrow on subject property (junior lien) ....**
- 12 **Sell and Relocate ...**
  - 13 Ask HomeSavers about other available house [sic] in stock (trade-
  - 14 in your house)
  - 15 Ask HomeSavers for an AS IS CASH OFFER (avoid realtor fees)
- 16 **Sell and Stay:**
  - 17 Ask HomeSavers about their special SALE-LEASE BACK
  - 18 PROGRAM
- 19 **Play the lottery Last [sic] minute, [sic] (Not a recommended**
- 20 **measure)**
- 21 (Emphases original.)

18 10. The solicitations set out in Paragraph No. 9 above were deceptive. The  
19 consumers whom DNT targeted could not reinstate their loans through any of DNT's  
20 purported "Ideas." For example, consumers facing foreclosure could not do the  
21 following:

- 22 a. Use their savings planned for retirement and/or emergency as they
- 23 did not have savings or had exhausted their savings.
- 24 b. Borrow against 401k plan as they had no 401(k) plans.
- 25 c. Borrow against Life insurance policy as they had none.
- 26 d. Borrow against other assets (car, boat, RV): while consumers may
- 27 have had cars, none had boats or RVs.
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e. Apply for a low interest credit card: consumers could not qualify for any credit card, especially a low interest one.

11. The following “services” that DNT offered to consumers facing imminent foreclosure were also deceptive as there was no possibility that consumers could do any of the following:

- a. Refinance your present Loan(s): Seek new financing from another source, thus lowering monthly payment.
- b. Borrow on subject property (junior lien): Seek new junior lien from another source. Normally will increase monthly payment.
- c. Sell and Relocate: Interview realtors for listing house and sale concepts.

12. A possible solution for consumers facing foreclosure to consider was to file bankruptcy, but this was not one of DNT’s suggestions or services.

13. DNT set up the HomeSavers promotion to give consumers only one option: HomeSavers “Special SALE-LEASE BACK PROGRAM.”

14. DNT’s HomeSavers program was deceptive and misleading as DNT did not “save” consumers’ homes.

15. Specifically, DNT’s HomeSavers Program worked as follows:

- a. DNT targeted consumers facing foreclosure who had a certain amount of equity in their homes.
- b. DNT convinced consumers that the only way to save their homes was to transfer title to DNT, usually via a warranty deed.
- c. DNT then reinstated consumers’ mortgages by paying the amount of the consumers’ arrearages. Within a year, DNT usually paid off

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the mortgages. This permitted DNT, for example, to acquire one consumer's home, worth \$52,000, for \$31,000; a second consumer's home, worth \$63,900, for \$33,000; and a third consumer's home, worth \$152,000, for \$100,000.

d. DNT's offer to consumers that they would receive "immediate CASH for Selling [sic] us this property" was deceptive. In reality, DNT paid consumers a *de minimus* amount. For example, DNT paid one consumer \$25 in cash. In another instance, DNT offered a consumer \$4,600, but paid the consumer only \$1,600.

e. DNT's offer to "give [consumers] ... 2 (or more) Months Payment FREE should you choose the LEASE OPTION AGREEMENT" was deceptive. In reality, DNT usually found an excuse to renege on all or part of its free-rent offer. Without limitation, DNT offered one consumer \$2,000 and two months' free rent for his home; DNT actually gave the consumer \$1,500 and one month's free rent.

f. DNT's statement that consumers would "[e]njoy a fresh new monthly payment to HomeSavers for continued residency in this property" was misleading. Because DNT often did not provide consumers with their leases until some time after the consumers signed warranty deeds, the consumers did not know what their monthly payments for the term of the lease would be.

g. Even in cases in which DNT set consumers' monthly rental payments at a lower amount than what their mortgage payments

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had been, DNT usually raised consumers' rent within a few months so that the consumers' rent payments were equal to or more than the consumers' mortgage payments had been. For example, one consumer was in foreclosure because he could not afford to pay \$380 a month on his mortgage. DNT charged the consumer \$300 a month for the first six months of his tenancy. During the seventh month, DNT raised the consumer's rent to \$700 a month.

- h. The rental payment DNT eventually charged almost always ensured that consumers would not be able to pay the rent in a timely manner just as they had not been able to pay their mortgage payments in a timely manner.
- i. When consumers were unable to make their rental payments to DNT on time, DNT imposed a 20% late fee on the monthly payment. DNT's imposition of these fees ensured that consumers would become further behind on their payments.
- j. At some point, consumers could no longer pay DNT what they owed in rent and late fees. DNT then filed forcible entry and detainer" actions (hereafter, "FEDs") against the consumers; the FEDs usually resulted in consumers' evictions.<sup>1</sup>

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<sup>1</sup> After evicting consumers from their homes, DNT often put these homes on the market as "No Qualifying" Rent-To-Own properties. Please see Paragraphs 17-19, below.

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k. In some cases, DNT offered consumers who attempted to exercise their option to purchase, but who failed to make the full down payment, an extension of time to re-purchase their homes. DNT's extensions were deceptive because if the consumers agreed to a longer lease period, DNT required them to also sign an agreement for a higher re-purchase price of the home. For example, DNT offered numerous extensions to a couple, but increased the couple's initial re-purchase price from \$89,000 to \$165,000.

l. DNT evicted many consumers to whom DNT had granted extensions as the consumers could not afford the down payment and the new re-purchase price of the home.

m. As an additional barrier to consumers who wanted to re-purchase their homes, DNT set the terms of the re-purchase agreement to make it virtually impossible for consumers to do so.

- 1) DNT required consumers to make a 10% down payment.
- 2) DNT furnished financing under which consumers had to purchase their homes over a period of seven years at a minimum interest rate of 10.5 to 11%, ensuring that the payments consumers made were interest-only payments except for a final balloon payment.



1 her early down payment and fell behind on one month's rent, DNT filed an FED and  
2 evicted her.

3 19. DNT's "No Qualifying" Rent-To-Own program worked in the following  
4 manner:  
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6 a. DNT did not provide consumers with written lease terms until the  
7 consumers paid their lease purchase deposit.

8 b. DNT did not require verification of income or otherwise check  
9 consumer's creditworthiness to see whether consumers could  
10 afford to pay the lease purchase deposit, the monthly rent, or the  
11 down payment. DNT did not verify whether the consumer could  
12 afford the purchase price of the home which consumers were to  
13 purchase at the end of their 18-month leases.  
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15 c. During the rental period, DNT charged the maximum of 20% late  
16 fees and other fees if consumers were late in paying. In many  
17 cases, consumers could not afford to pay the amount due on  
18 time, and DNT filed FEDs against the consumers. Most FEDs  
19 resulted in the consumers' eviction.  
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21 d. In instances in which consumers were able to make the  
22 necessary down payments and stay in the homes, DNT set up  
23 further hurdles for consumers to overcome:

24 1) DNT often required consumers to contact only the  
25 lenders DNT had "approved" to obtain conventional  
26 financing to purchase the homes.  
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2) If consumers did not qualify for conventional financing, DNT offered to finance the purchase for “selected” consumers, requiring them to close with Barbi Stewart of Fidelity National Title.

3) DNT usually offered financing for these consumers at 10.5% to 11% for the seven years, ensuring that all but the last balloon payment, consumers’ payments were interest-only payments.

4) At the end of seven years, consumers owed DNT a balloon payment for all or most of the principal and the remaining interest.

5) If consumers fell behind on their payments at any point during this process, DNT took action to reacquire the home.

e. From October, 2004 through November, 2005, only 3 of 74 consumers in DNT’s “No Qualifying” Rent-to-Own Transactions were able to purchase their rentals from DNT.

**VIOLATIONS OF THE CONSUMER FRAUD ACT**

20. A.R.S. § 44-1522 (A) of the Consumer Fraud Act, states the following:

The act, use, or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

