



Sen. Jacqueline Y. Collins

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09500HB2973sam005

LRB095 06413 MJR 53694 a

1 AMENDMENT TO HOUSE BILL 2973

2 AMENDMENT NO. _____. Amend House Bill 2973, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Code of Civil Procedure is amended by
6 adding Section 15-1502.5 as follows:

7 (735 ILCS 5/15-1502.5 new)

8 Sec. 15-1502.5. Homeowner protection.

9 (a) As used in this Section:

10 "Approved counseling agency" means a housing counseling
11 agency approved by the U.S. Department of Housing and Urban
12 Development.

13 "Borrower" means a natural person who seeks or obtains a
14 home loan.

15 "Consumer reporting agency" shall have the same meaning as
16 that term is defined in the federal Fair Credit Reporting Act.

1 "Delinquent" means past due with respect to payments on a
2 home loan.

3 "Department" means the Department of Financial and
4 Professional Regulation.

5 "Home loan" means a loan to or for the benefit of any
6 natural person made primarily for personal, family, or
7 household use, primarily secured by either a mortgage on
8 residential real property, certificates of stock, or other
9 evidence of ownership interests in and proprietary leases from
10 corporations, partnerships, or limited liability companies
11 formed for the purpose of cooperative ownership of residential
12 real property, all located in Illinois. "Home loan" does not
13 include any loan used to finance a home in which the borrower
14 or the borrower's immediate family does not intend to reside.
15 This Section shall not apply, or shall cease to apply, to
16 residential real estate that is not occupied as a principal
17 residence by the mortgagor.

18 "Lender" means any person, partnership, association,
19 corporation, or any other entity who either transfers, offers,
20 lends, or invests money in home loans.

21 "Secretary" means the Secretary of Financial and
22 Professional Regulation or other person authorized to act in
23 the Secretary's stead.

24 "Servicer" means any entity chartered under the Illinois
25 Banking Act, the Savings Bank Act, the Illinois Credit Union
26 Act, or the Illinois Savings and Loan Act of 1985 and any

1 person or entity licensed under the Residential Mortgage
2 License Act of 1987, the Consumer Installment Loan Act, or the
3 Sales Finance Agency Act who is responsible for the collection
4 or remittance for, or has the right or obligation to collect or
5 remit for, any lender, note owner, or note holder for a
6 lender's own account of payments, interest, principal, and
7 escrow items such as hazard insurance and taxes on a
8 residential mortgage loan in accordance with the terms of the
9 home loan, including loan payment follow up, delinquency loan
10 follow up, loan analysis, and any notifications to the borrower
11 that are necessary to enable the borrower to keep the loan
12 current and in good standing.

13 "Sustainable loan workout plan" means a plan that the
14 parties believe shall enable the borrower to stay current on
15 his or her mortgage payments for the foreseeable future when
16 taking into account the borrower's income and existing and
17 foreseeable debts. A sustainable loan workout plan may include,
18 but is not limited to, (1) a temporary suspension of payments,
19 (2) a lengthened loan term, (3) a lowered or frozen interest
20 rate, (4) a principal write down, (5) a repayment plan to pay
21 the existing loan in full, (6) deferred payments, or (7)
22 refinancing into a new affordable loan.

23 (b) Except in the circumstance in which a mortgagor has
24 filed a petition for relief under the United States Bankruptcy
25 Code, no mortgagee shall file a complaint to foreclose a
26 mortgage secured by residential real estate until the mortgagee

1 has satisfied the requirements of this Section.

2 (c) Notwithstanding any provision to the contrary, with
3 respect to a particular home loan, a lender, servicer, or
4 lender's agent need comply with the procedures and forbearances
5 described in this Section only once per subject loan.

6 Except for home loans in which any borrower has filed for
7 relief under the United States Bankruptcy Code, if a home loan
8 becomes delinquent, the lender, servicer, or lender's agent
9 shall send via certified U.S. mail, return receipt requested, a
10 notice advising the borrower that he or she may wish to seek
11 approved housing counseling.

12 At the same time, the lender, servicer, or lender's agent
13 shall send the notice via at least one of the following means:
14 regular U.S. mail, express or overnight mail, personal e-mail,
15 or personal fax machine. Neither the lender, servicer, nor
16 lender's agent shall institute legal action under Part 15 of
17 Article XV of the Code of Civil Procedure before mailing the
18 notice described in this subsection (c).

19 The notice required in this subsection (c) shall state the
20 date on which the notice was mailed, shall be headed in bold
21 14-point type "GRACE PERIOD NOTICE", and shall state the
22 following in 14-point type: "YOUR LOAN IS OR WAS MORE THAN 45
23 DAYS PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT
24 MAY BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING
25 COUNSELING. YOU HAVE A GRACE PERIOD OF 45 DAYS FROM THE DATE OF
26 THIS FORM TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE

1 GRACE PERIOD, THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION
2 AGAINST YOU. A LIST OF APPROVED COUNSELING AGENCIES MAY BE
3 OBTAINED FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND
4 PROFESSIONAL REGULATION."

5 The notice shall also list the Department's current
6 consumer hotline, the Department's website, and the telephone
7 number, fax number, and mailing address of the servicer's loss
8 mitigation department. No language, other than the language
9 prescribed in this subsection (c), shall be included in the
10 notice. The requirements of this subsection (c) shall be deemed
11 satisfied if the language and format prescribed in this
12 subsection is included in a counseling notification required
13 under federal law.

14 (d) Upon mailing the notice provided for under subsection
15 (c) of this Section, neither the lender, servicer, nor lender's
16 agent shall institute legal action under Part 15 of Article XV
17 of the Code of Civil Procedure for 45 days.

18 (e) If, within the 45-day period provided under subsection
19 (d) of this Section, an approved counseling agency provides
20 written notice to the lender, servicer, or lender's agent that
21 the borrower is seeking approved counseling services, then the
22 lender, servicer, or lender's agent must not institute legal
23 action under Part 15 of Article XV of the Code of Civil
24 Procedure for 45 days after the date of that notice. During the
25 45-day period provided under this subsection (e), the borrower
26 or counselor or both may prepare and proffer to the lender,

1 servicer, or lender's agent a proposed sustainable loan workout
2 plan. The lender, servicer, or lender's agent will then
3 determine whether to accept the proposed sustainable loan
4 workout plan. If the lender, servicer, or lender's agent and
5 the borrower agree to a sustainable loan workout plan, then the
6 lender, servicer, or lender's agent shall not institute legal
7 action under Part 15 of Article XV of the Code of Civil
8 Procedure for as long as the sustainable loan workout plan is
9 complied with by the borrower.

10 The agreed sustainable loan workout plan and any
11 modifications thereto must be in writing and signed by the
12 lender, servicer, or lender's agent and the borrower.

13 Upon written notice to the lender, servicer, or lender's
14 agent, the borrower may change approved counseling agencies,
15 but such a change does not entitle the borrower to any
16 additional period of forbearance.

17 (f) If the borrower fails to comply with the sustainable
18 loan workout plan, then nothing in this Section shall be
19 construed to impair the legal right of the lender, servicer, or
20 lender's agent to enforce the contract.

21 (g) A counselor employed by a housing counseling agency or
22 the housing counseling agency that in good faith provides
23 counseling shall not be liable to a lender, servicer, lender's
24 agent, or borrower for civil damages, except for willful or
25 wanton misconduct on the part of the counselor in providing the
26 counseling.

1 (h) A lender, servicer, or lender's agent that provides
2 information to a consumer reporting agency about a borrower who
3 is or has been in a period of forbearance provided under this
4 Section shall include in the report to the consumer reporting
5 agency that the borrower is or was in a statutorily guaranteed
6 period of forbearance and shall list the dates of the
7 forbearance.

8 (i) If the Secretary finds that the demand for counseling
9 services in any particular geographic area exceeds the number
10 of available approved counseling agencies, then he or she may
11 certify other persons or entities as approved counseling
12 agencies. Except as provided for in this Section, no for-profit
13 entities may be certified as approved counseling agencies.

14 (j) The Secretary shall have the power to issue orders
15 against any person or entity if the Secretary has reasonable
16 cause to believe that a violation of this Section has occurred,
17 is occurring, or is about to occur, if any person has violated,
18 is violating, or is about to violate any law, rule, order or
19 written agreement with the Secretary, or for the purpose of
20 administering the provisions of this Section and any rule
21 promulgated in accordance with this Section.

22 The Secretary may impose civil penalties of up to \$1,000
23 against any person for each violation of any provision of this
24 Section, any rule promulgated in accordance with this Section,
25 or any order of the Secretary. The Secretary shall also have
26 the power to subpoena witnesses, to administer an oath, to

1 examine any person under oath, and to require the production of
2 any relevant books, papers, accounts, and documents in the
3 course of and pursuant to any investigation being conducted or
4 any action being taken by the Secretary with respect to any
5 matter relating to the duties imposed upon, or the powers
6 vested in, the Secretary under the provisions of this Section
7 or any rule promulgated in accordance with this Section.

8 Any actions taken by the Secretary pursuant to this Section
9 shall be done in accordance with the Illinois Administrative
10 Procedure Act.

11 (k) The Department may adopt rules necessary for
12 implementation and administration of this Section.

13 (l) All final administrative decisions under this Section
14 are subject to judicial review pursuant to the provisions of
15 the Administrative Review Law and any rules adopted pursuant
16 thereto.

17 (m) There shall be no waiver of any provision of this
18 Section.

19 (n) It is the General Assembly's intent that compliance
20 with this Section shall not prejudice a mortgagee in ratings of
21 its bad debt collection or calculation standards or policies.

22 (o) This Section shall not apply to mortgages securing
23 residential real estate that were issued or originated on or
24 after November 1, 2008.

25 (p) This Section is repealed 2 years after the effective
26 date of this amendatory Act of the 95th General Assembly.

1 Section 97. Severability. The provisions of this Act are
2 severable under Section 1.31 of the Statute on Statutes.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law."