



Sen. Iris Y. Martinez

Filed: 5/8/2017

10000SB0568sam003

LRB100 04829 JLS 25932 a

1 AMENDMENT TO SENATE BILL 568

2 AMENDMENT NO. _____. Amend Senate Bill 568 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 reenacting and changing Section 15-1502.5 as follows:

6 (735 ILCS 5/15-1502.5)

7 Sec. 15-1502.5. Homeowner protection.

8 (a) As used in this Section:

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

12 "Approved Housing Counseling" means in-person counseling
13 provided by a counselor employed by an approved counseling
14 agency to all mortgagors ~~borrowers~~, or documented telephone
15 counseling where a hardship would be imposed on one or more
16 mortgagors ~~borrowers~~. A hardship shall exist in instances in

1 which the mortgagor borrower is confined to his or her home due
2 to medical conditions, as verified in writing by a physician or
3 the mortgagor borrower resides 50 miles or more from the
4 nearest approved counseling agency. In instances of telephone
5 counseling, the mortgagor borrower must supply all necessary
6 documents to the counselor at least 72 hours prior to the
7 scheduled telephone counseling session.

8 "Delinquent" means past due with respect to a payment on a
9 mortgage secured by residential real estate or found to be in
10 breach of a mortgage secured by residential real estate.

11 "Department" means the Department of Financial and
12 Professional Regulation.

13 "Secretary" means the Secretary of Financial and
14 Professional Regulation or other person authorized to act in
15 the Secretary's stead.

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

1 (b) ~~No~~ ~~Except in the circumstance in which a mortgagor has~~
2 ~~filed a petition for relief under the United States Bankruptcy~~
3 ~~Code, no mortgagee, servicer, or other party shall institute an~~
4 ~~action under this Part file a complaint to foreclose a mortgage~~
5 ~~secured by residential real estate until the requirements of~~
6 ~~this Section have been satisfied.~~

7 (c) ~~If Notwithstanding any other provision to the contrary,~~
8 ~~with respect to a particular mortgage secured by residential~~
9 ~~real estate, the procedures and forbearances described in this~~
10 ~~Section apply only once per subject mortgage. Except for~~
11 ~~mortgages secured by residential real estate in which any~~
12 ~~mortgagor has filed for relief under the United States~~
13 ~~Bankruptcy Code, if a mortgage secured by residential real~~
14 ~~estate becomes delinquent, no later than the 45th day of the~~
15 ~~mortgagor's delinquency, by more than 30 days the mortgagee or~~
16 ~~its servicer shall send via U.S. mail a written grace period~~
17 ~~notice (written notice) described in this subsection (c)~~
18 ~~advising the mortgagor that he or she may wish to seek approved~~
19 ~~housing counseling. A mortgagee, servicer, or other party is~~
20 ~~not required to provide the written notice more than once~~
21 ~~during any 180-day period except as provided otherwise in this~~
22 ~~Section or by federal law. A mortgagee, servicer, or other~~
23 ~~party may not institute an action under this Part until the~~
24 ~~mortgagor is at least 120 days delinquent on the mortgage.~~
25 ~~Notwithstanding anything to the contrary in this Section,~~
26 ~~nothing shall preclude the mortgagor and mortgagee from~~

1 communicating with each other during the initial 120 ~~30~~ days of
2 delinquency or reaching agreement on a sustainable loan workout
3 plan, or both.

4 The duty to provide written notice and a corresponding
5 grace period under this Section prior to filing a legal action
6 under this Part arises when a delinquency exists and may not be
7 waived.

8 ~~No foreclosure action under Part 15 of Article XV of the~~
9 ~~Code of Civil Procedure shall be instituted on a mortgage~~
10 ~~secured by residential real estate before mailing the notice~~
11 ~~described in this subsection (c).~~

12 The written notice required in this subsection (c) shall
13 state the date on which the notice was mailed, shall be headed
14 in bold 14-point type "GRACE PERIOD NOTICE", and shall state
15 the following in 14-point type: "YOUR MORTGAGE LOAN IS ~~MORE~~
16 ~~THAN 30 DAYS~~ PAST DUE OR YOU HAVE BECOME DELINQUENT ON YOUR
17 MORTGAGE LOAN. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY.
18 PLEASE CONTACT US. THERE MAY BE MORTGAGE LOAN WORKOUT OPTIONS
19 AVAILABLE TO YOU. ALSO, IT MAY BE IN YOUR BEST INTEREST TO SEEK
20 APPROVED HOUSING COUNSELING. YOU HAVE A GRACE PERIOD OF 120 ~~30~~
21 DAYS FROM THE DATE YOUR MORTGAGE LOAN BECAME DELINQUENT, WHICH
22 IS (INSERT DATE OF DELINQUENCY) OF THIS NOTICE TO OBTAIN
23 ~~APPROVED HOUSING COUNSELING~~. DURING THE 120-DAY GRACE PERIOD,
24 THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION AGAINST YOU.
25 ~~YOU MAY BE ENTITLED TO AN ADDITIONAL 30 DAY GRACE PERIOD IF YOU~~
26 ~~OBTAIN HOUSING COUNSELING FROM AN APPROVED HOUSING COUNSELING~~

1 ~~AGENCY.~~ A LIST OF APPROVED COUNSELING AGENCIES MAY BE OBTAINED
2 FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL
3 REGULATION.".

4 The written notice shall also list the United States
5 Department of Housing and Urban Development (HUD) toll-free
6 telephone number to access homeownership counselors or
7 counseling organizations; the Illinois Department of Financial
8 and Professional Regulation's ~~Department's~~ current consumer
9 hotline and its, ~~the Department's~~ website;¹⁷ and the customer
10 service telephone number, fax number, website and mailing
11 address of the mortgagee or its servicer. The written notice
12 shall also include a statement providing brief descriptions of
13 the loss mitigation options that may be available from the
14 mortgagee or its servicer. No language, other than language
15 substantially similar to the language prescribed in this
16 subsection (c), shall be included in the written notice.
17 Notwithstanding any other provision to the contrary, the
18 written notice and grace period ~~notice~~ required by this
19 subsection (c) may be combined with run concurrently with a
20 counseling notification, grace period, or any related
21 requirements ~~required~~ under federal law.

22 The sending of the written notice required under this
23 subsection (c) means depositing or causing to be deposited into
24 the United States mail an envelope with first class postage
25 prepaid that contains the document to be delivered. The
26 envelope shall be addressed to the mortgagor at the common

1 address of the residential real estate securing the mortgage.

2 (d) ~~Until 30 days after mailing the written notice required~~
3 ~~by provided for under subsection (c) of this Section has been~~
4 ~~provided, and no sooner than 120 days after the mortgagor~~
5 ~~became delinquent,~~ no legal action shall be instituted under
6 ~~this Part 15 of Article XV of the Code of Civil Procedure. If a~~
7 ~~party's action under this Part is based upon a violation of a~~
8 ~~mortgagor's due-on-sale clause or if the party is joining an~~
9 ~~action of a subordinate lienholder, this Section does not apply~~
10 ~~to that action.~~

11 (e) ~~If, within the 30-day period provided under subsection~~
12 ~~(d) of this Section, an approved counseling agency provides~~
13 ~~written notice to the mortgagee that the mortgagor is seeking~~
14 ~~approved counseling services, then no legal action under Part~~
15 ~~15 of Article XV of the Code of Civil Procedure shall be~~
16 ~~instituted for 30 days after the date of that notice. The date~~
17 ~~that such notice is sent shall be stated in the notice, and~~
18 ~~shall be sent to the address or fax number contained in the~~
19 ~~grace period notice required under subsection (c) of this~~
20 ~~Section. During the 30-day period provided under this~~
21 ~~subsection (c), the mortgagor or counselor or both may prepare~~
22 ~~and proffer to the mortgagee a proposed sustainable loan~~
23 ~~workout plan. The mortgagee will then determine whether to~~
24 ~~accept the proposed sustainable loan workout plan. If the~~
25 ~~mortgagee and the mortgagor agree to a sustainable loan workout~~
26 ~~plan, then no legal action under this Part 15 of Article XV of~~

1 ~~the Code of Civil Procedure~~ shall be instituted for as long as
2 the sustainable loan workout plan is complied with by the
3 mortgagor.

4 The agreed sustainable loan workout plan and any
5 modifications thereto must be in writing and signed by the
6 mortgagee and the mortgagor.

7 ~~Upon written notice to the mortgagee, the mortgagor may~~
8 ~~change approved counseling agencies, but such a change does not~~
9 ~~entitle the mortgagor to any additional period of forbearance.~~

10 (f) If the mortgagor fails to comply with the sustainable
11 loan workout plan, then nothing in this Section shall be
12 construed to impair the legal rights of the mortgagee to
13 enforce the contract.

14 (g) A counselor employed by a housing counseling agency or
15 the housing counseling agency that in good faith provides
16 counseling shall not be liable to a mortgagee or mortgagor for
17 civil damages, except for willful or wanton misconduct on the
18 part of the counselor in providing the counseling.

19 (h) There shall be no waiver of any provision of this
20 Section.

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

24 (j) This Section does ~~shall~~ not apply, ~~or shall cease to~~
25 ~~apply,~~ to residential real estate that is not occupied as a
26 principal residence by an individual who is a signatory on the

1 mortgage at the time the duty to mail the written notice
2 described in subsection (c) arises ~~the mortgagor.~~

3 (k) (1) While any mortgagor is a debtor in bankruptcy under
4 title 11 of the United States Code, a mortgagee or its servicer
5 with regard to the mortgage is exempt from the written notice
6 required by subsection (c) of this Section if no loss
7 mitigation option is available or if any mortgagor has provided
8 a notification pursuant to the Fair Debt Collection Practices
9 Act (FDCPA), Section 805(c) (15 U.S.C. 1692c(c)), with respect
10 to the mortgage as referenced in subsection (l) of this
11 Section. If the conditions of this paragraph (1) are not met,
12 the mortgagee or its servicer must comply with the written
13 notice required by subsection (c) of this Section as modified
14 by paragraph (2) of this subsection (k).

15 (2) If a mortgagor is delinquent when the mortgagor becomes
16 a debtor in bankruptcy, a mortgagee or its servicer must
17 provide the written notice required by subsection (c) of this
18 Section not later than the 45th day after the mortgagor files a
19 bankruptcy petition under Title 11 of the United States Code.
20 If the mortgagor is not delinquent when the mortgagor files a
21 bankruptcy petition, but subsequently becomes delinquent while
22 a debtor in bankruptcy, the mortgagee or its servicer must
23 provide the written notice not later than the 45th day of the
24 mortgagor's delinquency. A mortgagee or its servicer must
25 comply with these timing requirements regardless of whether the
26 mortgagee or servicer provided the written notice in the

1 preceding 180-day period.

2 A mortgagee or its servicer is not required to provide
3 written notice under subsection (c) of this Section more than
4 once during a single bankruptcy case.

5 (3) Except as provided in paragraph (4) of this subsection
6 (k), a mortgagee or its servicer that was exempt from the
7 written notice required by subsection (c) of this Section
8 pursuant to paragraph (1) of this subsection (k) must resume
9 compliance with the written notice required by subsection (c)
10 of this Section after the next payment due date that follows
11 the earliest of the following events: (i) the bankruptcy case
12 is dismissed, (ii) the bankruptcy case is closed, or (iii) the
13 mortgagor reaffirms personal liability for the mortgage.

14 (4) With respect to a mortgage for which the mortgagor has
15 discharged personal liability pursuant to 11 U.S.C. 727, 1141,
16 1228, or 1328, the mortgagee or its servicer must resume
17 compliance with the written notice required by subsection (c)
18 of this Section if the mortgagor has made any partial or
19 periodic payment on the mortgage after the commencement of the
20 mortgagor's bankruptcy case.

21 (1) With regard to a mortgage for which a mortgagor has
22 provided notification pursuant to the Fair Debt Collection
23 Practices Act (FDCPA), Section 805(c) (15 U.S.C. 1692c(c)), the
24 mortgagee or its servicer subject to the FDCPA with respect to
25 that mortgagor's loan:

26 (1) is exempt from the requirements of the written

1 notice under subsection (c) of this Section if no loss
2 mitigation option is available, or while a mortgagor is a
3 debtor in bankruptcy under Title 11 of the United States
4 Code as referenced in subsection (k) of this Section; and

5 (2) if the conditions of paragraph (1) of this
6 subsection (1) are not met, the mortgagee or its servicer
7 must comply with the requirements of the written notice
8 under subsection (c) of this Section as modified by this
9 paragraph (2): (i) In addition to the information contained
10 in the written notice required by subsection (c) of this
11 Section, the notice must include a statement as follows:
12 "(Name of the mortgagee or its servicer) intends to invoke
13 its specified remedy of foreclosure."; and (ii) The
14 mortgagee or its servicer is prohibited from providing the
15 written notice more than once during any 180-day period.

16 (m) ~~(k)~~ This Section is repealed July 1, 2027 ~~2016~~.

17 (n) This reenacted Section applies to causes of action that
18 arise on or after the effective date of this amendatory Act of
19 the 100th General Assembly.

20 (Source: P.A. 98-25, eff. 6-20-13.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law."