



Consumer Protection Committee

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09500SB1998ham001

LRB095 18639 MJR 50954 a

1 AMENDMENT TO SENATE BILL 1998

2 AMENDMENT NO. _____. Amend Senate Bill 1998 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Homeowner Protection Act.

6 Section 5. Purpose and construction. The purpose of this
7 Act is to help homeowners and communities avoid the devastating
8 effects of foreclosure. This Act is to be construed as a
9 borrower protection statute for all purposes. This Act shall be
10 liberally construed to effectuate its purpose.

11 Section 10. Definitions. As used in this Act:

12 "Approved counseling agency" means a housing counseling
13 agency approved by the U.S. Department of Housing and Urban
14 Development, a credit counseling agency approved by the
15 Secretary, or any other person or entity approved by the

1 Secretary.

2 "Borrower" means a natural person who seeks or obtains a
3 home loan.

4 "Delinquent" means past due with respect to payments on a
5 home loan.

6 "Department" means the Department of Financial and
7 Professional Regulation.

8 "Foreclosure Prevention Report" means the report required
9 by Section 30 of this Act.

10 "Home loan" means a loan to or for the benefit of any
11 natural person made primarily for personal, family, or
12 household use, primarily secured by either a mortgage on
13 residential real property, title to a mobile home, or
14 certificates of stock or other evidence of ownership interests
15 in and proprietary leases from corporations, partnerships, or
16 limited liability companies formed for the purpose of
17 cooperative ownership of residential real property, all
18 located in this State.

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

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

25 "Servicer" means any entity chartered under the Illinois
26 Banking Act, the Savings Bank Act, the Illinois Credit Union

1 Act, or the Illinois Savings and Loan Act of 1985 and any
2 person or entity licensed under the Residential Mortgage
3 License Act of 1987, the Consumer Installment Loan Act, or the
4 Sales Finance Agency Act who is responsible for the collection
5 or remittance for or has the right or obligation to collect or
6 remit for any lender, note owner, or note holder or for a
7 lender's own account of payments, interest, principal, and
8 escrow items (such as hazard insurance and taxes on a
9 residential mortgage loan) in accordance with the terms of the
10 home loan, including loan payment follow up, delinquency loan
11 follow up, loan analysis, and any notifications to the borrower
12 that are necessary to enable the borrower to keep the loan
13 current and in good standing.

14 Section 15. Counseling prior to perfecting foreclosure
15 proceedings.

16 (a) Except for home loans in which any borrower has filed
17 for relief under the United States Bankruptcy Code, if a home
18 loan becomes delinquent by more than 30 days, the servicer
19 shall send a notice advising the borrower that he or she may
20 wish to seek approved credit counseling.

21 (b) The notice required in subsection (a) of this Section
22 shall state the date on which the notice was mailed, shall be
23 headed in bold, 14-point type, "GRACE PERIOD NOTICE", and shall
24 state the following in 14-point type: "YOUR LOAN IS OR WAS MORE
25 THAN 30 DAYS PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL

1 DIFFICULTY. IT MAY BE IN YOUR BEST INTEREST TO SEEK APPROVED
2 HOUSING OR CREDIT COUNSELING. YOU HAVE A GRACE PERIOD OF 30
3 DAYS FROM THE DATE OF THIS FORM TO OBTAIN APPROVED HOUSING OR
4 CREDIT COUNSELING. DURING THE GRACE PERIOD, THE LAW PROHIBITS
5 US FROM TAKING ANY LEGAL ACTION AGAINST YOU. A LIST OF APPROVED
6 COUNSELING AGENCIES MAY BE OBTAINED FROM THE ILLINOIS
7 DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION." The
8 notice shall also list the Department's current consumer
9 hotline, the Department's website, and the telephone number,
10 fax number, and mailing address of the servicer's loss
11 mitigation department. No language, other than the language
12 prescribed in this subsection (b), shall be included in the
13 notice. The requirements of this subsection (b) shall be deemed
14 satisfied if the language and format prescribed in this
15 subsection (b) is included in a counseling notification
16 required under federal law.

17 (c) Upon mailing the notice provided for under subsection
18 (b) of this Section, neither the lender, servicer, nor lender's
19 agent shall institute legal action under Part 15 of Article XV
20 of the Code of Civil Procedure for 30 days. Only one such
21 30-day period of forbearance is allowed under this subsection
22 (c) per subject loan.

23 (d) If, within the 30-day period provided under subsection
24 (c) of this Section, an approved counseling agency notifies the
25 lender, servicer, or lender's agent that the borrower is
26 seeking approved counseling services, then the lender,

1 servicer, or lender's agent shall not institute legal action
2 under Part 15 of Article XV of the Code of Civil Procedure for
3 30 days after the date of that notice. During the 30-day period
4 provided under this subsection (d), the borrower or counselor
5 or both may prepare and proffer to the lender, servicer, or
6 lender's agent a proposed debt management plan. The lender,
7 servicer, or lender's agent shall then determine whether to
8 accept the proposed debt management plan, based upon an
9 evaluation of the borrower's ability to repay the loan under
10 the proffered plan, in light of the borrower's current income
11 and other financial resources. If the lender, servicer, or
12 lender's agent and the borrower agree to a debt management
13 plan, then the lender, servicer, or lender's agent shall not
14 institute legal action under Part 15 of Article XV of the Code
15 of Civil Procedure for as long as the debt management plan is
16 complied with by the borrower. The agreed debt management plan
17 and any modifications thereto must be in writing and signed by
18 the lender, servicer, or lender's agent and the borrower. Upon
19 written notice to the lender, servicer, or lender's agent, the
20 borrower may change approved counseling agencies, but such a
21 change does not entitle the borrower to any additional period
22 of forbearance.

23 (e) If the borrower fails to comply with the agreed debt
24 management plan, then nothing in this Section shall be
25 construed to impair the legal right of the lender, servicer, or
26 lender's agent to enforce the contract.

1 (f) This Section is repealed on December 31, 2010.

2 Section 20. Foreclosure Prevention Report; requirements.

3 (a) A servicer shall compile and submit to the Secretary on
4 or before the twentieth business day of every other month a
5 Foreclosure Prevention Report that contains the following
6 information for the preceding 2 months or as otherwise
7 indicated:

8 (1) The number of home loans the servicer is servicing.

9 (2) The number of home loans that the servicer is
10 servicing that are in payment default.

11 (3) Information on loss mitigation activities
12 undertaken, including, but not limited to, the following:

13 (A) the number and identification of home loans
14 that were refinanced into more affordable or fixed home
15 loans;

16 (B) the number and identification of home loans for
17 which the borrower has sought housing or credit
18 counseling, if known;

19 (C) the number of workout arrangements entered
20 into by the servicer in connection with home loans; and

21 (D) the proactive steps taken by the servicer to
22 identify borrowers at a heightened risk of default,
23 such as those with impending interest rate resets,
24 including, but not limited to, contacts with borrowers
25 to assess their ability to repay their home loan

1 obligations.

2 (4) The number of foreclosure actions commenced in this
3 State in connection with home loans it is servicing.

4 (5) Any other information that the Secretary may deem
5 necessary, including geographic information regarding
6 applicable home loans.

7 (b) This Section is repealed on December 31, 2010.

8 Section 25. Foreclosure Prevention Report; publication.

9 The Secretary may publish for public review the Foreclosure
10 Prevention Report or any information contained in the
11 Foreclosure Prevention Report, except personally identifying
12 information regarding borrowers. This Section is repealed on
13 December 31, 2010.

14 Section 90. Enforcement.

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

22 (b) The Secretary may impose civil penalties of up to
23 \$1,000 against any person for each violation of any provision
24 of this Act. The Secretary shall also have the power to

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

8 Section 95. No authority to make or promulgate rules.
9 Notwithstanding any other rulemaking authority that may exist,
10 neither the Governor nor any agency or agency head under the
11 jurisdiction of the Governor has any authority to make or
12 promulgate rules to implement or enforce the provisions of this
13 Act. If, however, the Governor believes that rules are
14 necessary to implement or enforce the provisions of this Act,
15 the Governor may suggest rules to the General Assembly by
16 filing them with the Clerk of the House and Secretary of the
17 Senate and by requesting that the General Assembly authorize
18 such rulemaking by law, enact those suggested rules into law,
19 or take any other appropriate action in the General Assembly's
20 discretion. Nothing contained in this Act shall be interpreted
21 to grant rulemaking authority under any other Illinois statute
22 where such authority is not otherwise explicitly given. For the
23 purposes of this Act, "rules" is given the meaning contained in
24 Section 1-70 of the Illinois Administrative Procedure Act, and
25 "agency" and "agency head" are given the meanings contained in

1 Sections 1-20 and 1-25 of the Illinois Administrative Procedure
2 Act to the extent that such definitions apply to agencies or
3 agency heads under the jurisdiction of the Governor."

4 Section 100. Judicial review. All final administrative
5 decisions under this Act are subject to judicial review
6 pursuant to the provisions of the Administrative Review Law and
7 any rules adopted pursuant thereto.

8 Section 105. Waiver prohibited. There shall be no waiver of
9 any provision of this Act.

10 Section 999. Effective date. This Act takes effect January
11 1, 2009."