

SB3739



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3739

Introduced 2/11/2010, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1502.5

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure. Provides that specified procedures and counseling requirements that are described as providing homeowner protection in the foreclosure process are repealed 3 years after the effective date of the amendatory Act (instead of April 6, 2011). Effective immediately.

LRB096 20387 AJ0 36030 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 (735 ILCS 5/15-1502.5)

7 (Section scheduled to be repealed on April 6, 2011)

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 "Approved Housing Counseling" means in-person counseling
14 provided by a counselor employed by an approved counseling
15 agency to all borrowers, or documented telephone counseling
16 where a hardship would be imposed on one or more borrowers. A
17 hardship shall exist in instances in which the borrower is
18 confined to his or her home due to medical conditions, as
19 verified in writing by a physician or the borrower resides 50
20 miles or more from the nearest approved counseling agency. In
21 instances of telephone counseling, the borrower must supply all
22 necessary documents to the counselor at least 72 hours prior to
23 the scheduled telephone counseling session.

1 "Delinquent" means past due with respect to a payment on a
2 mortgage secured by residential real estate.

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

5 "Secretary" means the Secretary of Financial and
6 Professional Regulation or other person authorized to act in
7 the Secretary's stead.

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

19 (b) Except in the circumstance in which a mortgagor has
20 filed a petition for relief under the United States Bankruptcy
21 Code, no mortgagee shall file a complaint to foreclose a
22 mortgage secured by residential real estate until the
23 requirements of this Section have been satisfied.

24 (c) Notwithstanding any other provision to the contrary,
25 with respect to a particular mortgage secured by residential
26 real estate, the procedures and forbearances described in this

1 Section apply only once per subject mortgage.

2 Except for mortgages secured by residential real estate in
3 which any mortgagor has filed for relief under the United
4 States Bankruptcy Code, if a mortgage secured by residential
5 real estate becomes delinquent by more than 30 days the
6 mortgagee shall send via U.S. mail a notice advising the
7 mortgagor that he or she may wish to seek approved housing
8 counseling. Notwithstanding anything to the contrary in this
9 Section, nothing shall preclude the mortgagor and mortgagee
10 from communicating with each other during the initial 30 days
11 of delinquency or reaching agreement on a sustainable loan
12 workout plan, or both.

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

17 The notice required in this subsection (c) shall state the
18 date on which the notice was mailed, shall be headed in bold
19 14-point type "GRACE PERIOD NOTICE", and shall state the
20 following in 14-point type: "YOUR LOAN IS MORE THAN 30 DAYS
21 PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY
22 BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING COUNSELING.
23 YOU HAVE A GRACE PERIOD OF 30 DAYS FROM THE DATE OF THIS NOTICE
24 TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE GRACE PERIOD,
25 THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION AGAINST YOU.
26 YOU MAY BE ENTITLED TO AN ADDITIONAL 30 DAY GRACE PERIOD IF YOU

1 OBTAIN HOUSING COUNSELING FROM AN APPROVED HOUSING COUNSELING
2 AGENCY. A LIST OF APPROVED COUNSELING AGENCIES MAY BE OBTAINED
3 FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL
4 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 mortgagee. No
8 language, other than language substantially similar to the
9 language prescribed in this subsection (c), shall be included
10 in the notice. Notwithstanding any other provision to the
11 contrary, the grace period notice required by this subsection
12 (c) may be combined with a counseling notification required
13 under federal law.

14 The sending of the notice required under this subsection
15 (c) means depositing or causing to be deposited into the United
16 States mail an envelope with first-class postage prepaid that
17 contains the document to be delivered. The envelope shall be
18 addressed to the mortgagor at the common address of the
19 residential real estate securing the mortgage.

20 (d) Until 30 days after mailing the notice provided for
21 under subsection (c) of this Section, no legal action shall be
22 instituted under Part 15 of Article XV of the Code of Civil
23 Procedure.

24 (e) If, within the 30-day period provided under subsection
25 (d) of this Section, an approved counseling agency provides
26 written notice to the mortgagee that the mortgagor is seeking

1 approved counseling services, then no legal action under Part
2 15 of Article XV of the Code of Civil Procedure shall be
3 instituted for 30 days after the date of that notice. The date
4 that such notice is sent shall be stated in the notice, and
5 shall be sent to the address or fax number contained in the
6 Grace Period Notice required under subsection (c) of this
7 Section. During the 30-day period provided under this
8 subsection (e), the mortgagor or counselor or both may prepare
9 and proffer to the mortgagee a proposed sustainable loan
10 workout plan. The mortgagee will then determine whether to
11 accept the proposed sustainable loan workout plan. If the
12 mortgagee and the mortgagor agree to a sustainable loan workout
13 plan, then no legal action under Part 15 of Article XV of the
14 Code of Civil Procedure shall be instituted for as long as the
15 sustainable loan workout plan is complied with by the
16 mortgagor.

17 The agreed sustainable loan workout plan and any
18 modifications thereto must be in writing and signed by the
19 mortgagee and the mortgagor.

20 Upon written notice to the mortgagee, the mortgagor may
21 change approved counseling agencies, but such a change does not
22 entitle the mortgagor to any additional period of forbearance.

23 (f) If the mortgagor fails to comply with the sustainable
24 loan workout plan, then nothing in this Section shall be
25 construed to impair the legal rights of the mortgagee to
26 enforce the contract.

1 (g) A counselor employed by a housing counseling agency or
2 the housing counseling agency that in good faith provides
3 counseling shall not be liable to a mortgagee or mortgagor for
4 civil damages, except for willful or wanton misconduct on the
5 part of the counselor in providing the counseling.

6 (h) There shall be no waiver of any provision of this
7 Section.

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

11 (j) This Section shall not apply, or shall cease to apply,
12 to residential real estate that is not occupied as a principal
13 residence by the mortgagor.

14 (k) ~~Blank. This Section is repealed 2 years after the~~
15 ~~effective date of this amendatory Act of the 95th General~~
16 ~~Assembly.~~

17 (l) This Section is repealed 3 years after the effective
18 date of this amendatory Act of the 96th General Assembly.

19 (Source: P.A. 95-1047, eff. 4-6-09.)

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