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SENATE BILL 84

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO HOME LOANS; AMENDING THE HOME LOAN PROTECTION ACT;  
CLARIFYING THAT THE HOME LOAN PROTECTION ACT DOES NOT AFFECT  
FORECLOSURE PROCESSES PURSUANT TO THE DEED OF TRUST ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 58-21A-6 NMSA 1978 (being Laws 2003,  
Chapter 436, Section 6, as amended) is amended to read:

"58-21A-6. DEFAULT--NOTICE--RIGHT TO CURE.--

A. Before an action is filed to foreclose or  
collect money due pursuant to a home loan or before other  
action is taken to seize or transfer ownership of property  
subject to a home loan, the creditor or creditor's assignee of  
the loan shall deliver to the borrower a notice of the right to  
cure the default informing the borrower of:

- (1) the nature of the default;

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1 (2) the borrower's right to cure the default  
2 by paying the sum of money required, provided that a creditor  
3 or assignee shall accept any partial payment made or tendered  
4 in response to the notice. If the amount necessary to cure the  
5 default will change within thirty days of the notice, due to  
6 the application of a daily interest rate or the addition of  
7 late fees, as allowed by the Home Loan Protection Act, the  
8 notice shall give sufficient information to enable the borrower  
9 to calculate the amount at any point within the thirty-day  
10 period;

11 (3) the date by which the borrower may cure  
12 the default to avoid a court action, acceleration and  
13 initiation of foreclosure or other action to seize the  
14 property, which date shall not be less than thirty days after  
15 the date the notice is delivered, and the name and address and  
16 telephone number of a person to whom the payment or tender  
17 shall be made;

18 (4) that if the borrower does not cure the  
19 default by the date specified, the creditor or assignee may  
20 file an action for money due or take steps to terminate the  
21 borrower's ownership in the property by requiring payment in  
22 full of the home loan and commencing a foreclosure proceeding  
23 or other action to seize the property; and

24 (5) the name and address and the telephone  
25 number of a person whom the borrower may contact if the

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1 borrower disagrees with the assertion that a default has  
2 occurred or the correctness of the calculation of the amount  
3 required to cure the default.

4 B. If a creditor or assignee asserts that grounds  
5 for acceleration exist and requires the payment in full of all  
6 sums secured by the home loan, the borrower, or anyone  
7 authorized to act on the borrower's behalf, may, at any time  
8 prior to the time title is transferred by means of foreclosure,  
9 by judicial proceeding and sale or otherwise, cure the default,  
10 and reinstate the home loan. Cure of the default shall  
11 reinstate the borrower to the same position as if the default  
12 had not occurred and shall nullify, as of the date of the cure,  
13 an acceleration of any obligation under the home loan arising  
14 from the default.

15 C. To cure a default under this section, a borrower  
16 shall not be required to pay any charge, fee or penalty  
17 attributable to the exercise of the right to cure a default,  
18 other than the fees specifically allowed by this subsection.  
19 The borrower shall not be liable for any attorney fees relating  
20 to the default that are incurred by the creditor or assignee  
21 prior to or during the thirty-day period set forth in  
22 Subsection A of this section, nor for any such fees in excess  
23 of one hundred dollars (\$100) that are incurred by the creditor  
24 or assignee after the expiration of the thirty-day period but  
25 prior to the time the creditor or assignee files a foreclosure

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1 or other judicial action or takes other action to seize or  
2 transfer ownership of the real estate. After the creditor or  
3 assignee files a foreclosure or other judicial action or takes  
4 other action to seize or transfer ownership of the real estate,  
5 the borrower shall only be liable for attorney fees that are  
6 reasonable and actually incurred by the creditor or assignee,  
7 based on a reasonable hourly rate and a reasonable number of  
8 hours.

9 D. If a default is cured prior to the initiation of  
10 any action to foreclose or to seize the residence, the creditor  
11 or assignee shall not institute a proceeding or other action  
12 for that default. If a default is cured after the initiation  
13 of any action, the creditor or assignee shall take such steps  
14 as are necessary to terminate the action.

15 E. A creditor or a creditor's assignee of a home  
16 loan that has the legal right to foreclose shall, in a  
17 foreclosure, use the judicial foreclosure procedures provided  
18 by law or the nonjudicial foreclosure procedures provided in  
19 the Deed of Trust Act. In such a proceeding, the borrower may  
20 assert the nonexistence of a default and any other claim or  
21 defense to acceleration and foreclosure, including any based on  
22 a violation of the Home Loan Protection Act, though no such  
23 claim or defense shall be deemed a compulsory counterclaim."