

1 SENATE BILL 30

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO REAL PROPERTY; ENACTING THE HOME LOAN LOSS
12 MITIGATION SERVICING STANDARDS ACT; PROHIBITING CERTAIN ACTS;
13 REQUIRING OPPORTUNITY FOR MITIGATION OF LOSS; REQUIRING CERTAIN
14 ACTIONS PRIOR TO FORECLOSURE; PROVIDING FOR REMEDIES.

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

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
18 cited as the "Home Loan Loss Mitigation Servicing Standards
19 Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Home Loan Loss Mitigation Servicing Standards Act:

22 A. "borrower" means a natural person obligated to
23 repay a home loan, including a co-borrower, cosigner or
24 guarantor;

25 B. "creditor" means a person that makes or holds a

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1 home loan, including a servicer but not the seller in a real
2 estate sales contract or reverse mortgage that is otherwise
3 binding pursuant to New Mexico law;

4 C. "home loan" means a loan, including an open-end
5 credit plan, other than a reverse mortgage transaction or a
6 bridge loan, where the principal amount does not exceed the
7 conforming loan size limit for a single-family dwelling as
8 established by the federal national mortgage association and
9 where the loan is secured by:

10 (1) a mortgage or deed of trust on real estate
11 in this state upon which there is located or there is to be
12 located a structure:

13 (a) designed principally for occupancy
14 by one to four families; and

15 (b) that is or will be occupied by a
16 borrower as the borrower's principal residence; or

17 (2) a security interest on a manufactured home
18 that is or will be occupied by a borrower as the borrower's
19 principal residence;

20 D. "loss mitigation" means an alternative to
21 foreclosure offered by the servicer of a home loan that is
22 available through the servicer to the borrower;

23 E. "robo-signing" means signing foreclosure
24 documents without reviewing and verifying the information
25 contained in the documents as required by law;

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1 F. "servicer" means a person who collects or
2 receives payments, including principal, interest and trust
3 items such as hazard insurance, property taxes and other
4 amounts due, who is the creditor or a person acting on behalf
5 of the creditor in accordance with the terms of a home loan and
6 who works with a borrower on behalf of a creditor to implement
7 available loss mitigation options when the borrower is in
8 financial hardship or default;

9 G. "single point of contact" means an employee of
10 the servicer whom a borrower can reach by telephone, who has
11 knowledge of the borrower's loan and its status, who provides
12 continuity of contact and who assists the borrower with loss
13 mitigation and foreclosure processes; and

14 H. "small servicer" means a servicer that services
15 five thousand or fewer home loans nationally.

16 SECTION 3. [NEW MATERIAL] SMALL SERVICERS EXCEPTED.--The
17 Home Loan Loss Mitigation Servicing Standards Act applies to
18 all home loans except home loans serviced by a small servicer.

19 SECTION 4. [NEW MATERIAL] PROHIBITED PRACTICES AND
20 PROVISIONS REGARDING HOME LOANS.--

21 A. Robo-signing is prohibited by the Home Loan Loss
22 Mitigation Servicing Standards Act.

23 B. A servicer is prohibited from making the first
24 notice or filing required for foreclosure until a home loan is
25 more than one hundred twenty days delinquent.

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1 C. If a home loan is more than one hundred twenty
2 days delinquent and the borrower submits an application for a
3 loss mitigation option before a servicer has made the first
4 notice or filing required for foreclosure, the servicer shall
5 not start foreclosure proceedings unless:

6 (1) the servicer has reviewed and evaluated
7 the application and has informed the borrower that the borrower
8 is not eligible for any loss mitigation option and any appeal
9 has been exhausted;

10 (2) the borrower has rejected all loss
11 mitigation offers; or

12 (3) the borrower fails to comply with the
13 terms of a loss mitigation agreement.

14 D. If a borrower submits a complete application for
15 a loss mitigation option after foreclosure proceedings have
16 commenced but more than thirty-seven days before a scheduled
17 foreclosure sale, a servicer may not move for a foreclosure
18 judgment or order of sale, or conduct a foreclosure sale, until
19 one of the conditions in Subsection C of this section has been
20 satisfied.

21 SECTION 5. [NEW MATERIAL] LOSS MITIGATION REQUIRED.--

22 A. No later than thirty-six days after the date of
23 delinquency of a home loan, a servicer shall:

24 (1) notify the borrower in writing of all
25 available loss mitigation options that are applicable to the

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1 borrower's home loan;

2 (2) notify the borrower in writing of the
3 borrower's right to submit a loss mitigation application if the
4 servicer provides any loss mitigation options;

5 (3) provide loss mitigation applications and
6 procedures or guidelines that will be used to evaluate the
7 application, including deadlines and a list of documents
8 required to be submitted by the borrower;

9 (4) provide a current list of contact
10 information for certified mortgage delinquency and default
11 resolution housing counseling agencies that employ housing
12 counselors certified in loss mitigation by the federal
13 department of housing and urban development who are located in
14 New Mexico; and

15 (5) provide a twelve-month history or a
16 history from the date of delinquency, whichever is longer, of
17 how payments or partial payments have been applied, including
18 the date each payment was received and any action the servicer
19 will take in the event of partial payment.

20 B. Within forty-five days of the date of
21 delinquency of a home loan, the servicer shall provide the
22 name, mailing address, phone number, facsimile number and email
23 address for the servicer's single point of contact for that
24 borrower. The single point of contact shall:

25 (1) communicate the process by which the

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1 borrower may apply for an available loss mitigation option, the
2 deadline for application and any required submissions to be
3 considered for the loss mitigation option;

4 (2) respond within three business days after
5 the borrower's inquiry regarding the current status of the
6 borrower's home loan and loss mitigation application;

7 (3) ensure that the borrower is considered for
8 all loss mitigation alternatives, if any, offered by the
9 servicer; and

10 (4) provide any other assistance necessary for
11 the borrower to pursue loss mitigation options.

12 C. A servicer shall acknowledge in writing receipt
13 of a loss mitigation application within five business days and
14 inform the borrower whether the application is complete and, if
15 not, what information is needed to complete the application.

16 D. When a servicer receives the information needed
17 to complete a loss mitigation application, the servicer shall
18 evaluate the application for all loss mitigation options for
19 which the borrower may be eligible and provide the borrower
20 with a written decision within thirty days.

21 E. If a loss mitigation application is denied,
22 written notice shall include a detailed explanation of the
23 reasons for denial and the financial calculations that were the
24 basis for the denial.

25 F. All written and oral communication with the

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1 borrower by the servicer required by the Home Loan Loss
2 Mitigation Servicing Standards Act shall be in a language the
3 borrower can understand.

4 SECTION 6. [NEW MATERIAL] ENFORCEMENT OF PROVISIONS AND
5 ENACTMENT OF RULES.--The financial institutions division of the
6 regulation and licensing department shall:

7 A. enforce the provisions of the Home Loan Loss
8 Mitigation Servicing Standards Act and, after consulting with
9 the attorney general, shall adopt such rules as are necessary
10 to implement that act; and

11 B. promulgate multilingual versions of the notices
12 and disclosures required by the Home Loan Loss Mitigation
13 Servicing Standards Act and provide the notices and disclosures
14 to servicers.

15 SECTION 7. [NEW MATERIAL] REMEDIES.--If a court finds
16 that there has been a material violation of any provision of
17 the Home Loan Loss Mitigation Servicing Standards Act by a
18 servicer, the court may:

- 19 A. halt foreclosure proceedings until the servicer
20 complies with the requirements of the law;
- 21 B. dismiss the action;
- 22 C. impose sanctions, attorney fees and costs; and
- 23 D. order any other relief provided by law.

24 SECTION 8. SEVERABILITY.--If any part or application of
25 the Home Loan Loss Mitigation Servicing Standards Act is held

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1 invalid, the remainder or its applications to other situations
2 or persons shall not be affected.

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