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SENATE BILL 439

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

INTRODUCED BY

Steven P. Neville

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) of the nature of the default;

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1 (2) of the borrower's right to cure the
2 default by paying the sum of money required; provided that a
3 creditor or assignee shall accept any partial payment made or
4 tendered in response to the notice. If the amount necessary to
5 cure the default will change within thirty days of the notice
6 due to the application of a daily interest rate or the addition
7 of 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) of 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) of 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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[bracketed material] = delete

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."