

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 349

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO MORTGAGES; ENACTING THE MORTGAGE RELIEF ACT;
PROVIDING DEFINITIONS; REQUIRING CERTAIN DISCLOSURES BE MADE TO
BORROWERS; REQUIRING CERTAIN LOSS MITIGATION OPTIONS; REQUIRING
COMPLIANCE AS A PRECONDITION TO FORECLOSURE; DECLARING AN
EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Mortgage Relief Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Mortgage Relief Act:

A. "borrower" means a natural person obligated to
repay a home loan, including a co-borrower, cosigner or
guarantor, and includes any potential or confirmed successor in
interest to the original borrower or mortgagor, as provided by

.220400.2

underscored material = new
[bracketed material] = delete

1 12 C.F.R. 1024.31;

2 B. "loss mitigation guideline" means any process
3 established by the owner or investor of a mortgage loan that
4 describes the sequence and content of loss mitigation options
5 that a servicer must follow in reviewing a borrower for
6 alternatives to foreclosure, and includes the guidelines for
7 loss mitigation developed by the government-sponsored
8 enterprise, the federal housing administration, the United
9 States department of veterans affairs or the United States
10 department of agriculture, as well as guidelines and protocols
11 applicable to private mortgage loans through securitization
12 agreements or other contractual terms;

13 C. "mortgage loan" means any loan primarily for
14 personal, family or household use that is secured by a
15 mortgage, deed of trust or other equivalent consensual security
16 interest on a dwelling or residential real estate upon which is
17 constructed or intended to be constructed a dwelling as so
18 defined; and

19 D. "servicer" means any person or entity who
20 directly services a mortgage loan or who is responsible for
21 interacting with the borrower and regularly managing the loan
22 account, including collecting and crediting periodic loan
23 payments, reviewing borrowers for loss mitigation, managing any
24 escrow account or enforcing the note and security instrument,
25 either as the current owner of the promissory note or as the

.220400.2

1 current owner's authorized agent, and includes a subservicing
2 agent to a master servicer by contract and a servicer of a
3 mortgage loan as provided in the federal Real Estate Settlement
4 Procedures Act.

5 SECTION 3. [NEW MATERIAL] LOSS MITIGATION GUIDELINES--
6 DISCLOSURES.--

7 A. Within thirty days of the effective date of the
8 Mortgage Relief Act, a servicer of a mortgage loan that is in
9 default as of the effective date of this act, or that
10 subsequently enters default, shall send to each borrower with a
11 residential mortgage, for a property that is located within the
12 state of New Mexico, a disclosure of the loss mitigation
13 guidelines that apply to that borrower's loan. The disclosure
14 shall include:

15 (1) the identity of and contact information
16 for any private entity, government-sponsored enterprise or
17 federal agency that owns, insures or guarantees the loan;

18 (2) a summary of the forbearance and
19 post-forbearance loss mitigation options that are available for
20 the loan, including references to where the complete loss
21 mitigation guideline texts can be obtained by the borrower; and

22 (3) information on how to request a loss
23 mitigation option from any entity identified in the disclosure.

24 B. The disclosure shall not be required to include
25 eligibility determinations for a specific borrower, but shall

.220400.2

1 describe the programs and options that the servicer currently
2 offers for the borrower's type of loan.

3 C. After the disclosure is provided, as required in
4 Subsection A of this section, a servicer shall provide each
5 borrower with a further disclosure addressing the same matters
6 provided in Subsection A of this section at least thirty days
7 prior to the filing of a foreclosure complaint and any time
8 when a borrower requests assistance from the servicer to avoid
9 foreclosure.

10 D. A servicer shall disclose all loss mitigation
11 options potentially available to the borrower; provided that
12 the loss mitigation options required to be disclosed and
13 provided by the servicer shall be identical to forbearance and
14 post-forbearance loss mitigation options available at that time
15 for similar loans owned or guaranteed by government-sponsored
16 enterprises. If investor guidelines or other legal
17 requirements prohibit a servicer from compliance with this
18 section, the servicer shall disclose to the borrower, with
19 specificity and in full, the source of those guidelines or
20 legal restrictions that prohibit the servicer from offering
21 those loss mitigation options.

22 E. In no event shall a servicer be entitled to
23 recover from a borrower any cost incurred by the servicer in
24 complying with the Mortgage Relief Act.

25 SECTION 4. [NEW MATERIAL] COMPLIANCE--PRECONDITION TO

.220400.2

1 FORECLOSURE.--

2 A. A servicer shall specify within and attach to a
3 foreclosure complaint sufficient evidence that the disclosures
4 required by the Mortgage Relief Act were provided to the
5 borrower.

6 B. It is unlawful for a servicer to file a
7 foreclosure complaint, enter judgment of foreclosure or conduct
8 a foreclosure sale unless the servicer has:

9 (1) provided the borrower with the proper and
10 timely disclosures as required by the Mortgage Relief Act; and

11 (2) considered the borrower for loss
12 mitigation options, and if rejected, provided specific reasons
13 to the borrower for that rejection and an explanation of any
14 appeal rights available to the borrower regarding any
15 determination made regarding a loss mitigation application.

16 SECTION 5. [NEW MATERIAL] FAILURE TO COMPLY.--

17 A. Failure to comply with the provisions of the
18 Mortgage Relief Act:

19 (1) may be used as a defense by a borrower in
20 a foreclosure action; and

21 (2) shall constitute an unfair or deceptive
22 trade practice and shall be subject to the penalties and
23 remedies set forth in the Unfair Practices Act.

24 B. In all claims involving a violation of the
25 Mortgage Relief Act, the servicer or party seeking a

.220400.2

1 foreclosure shall be the party required to prove compliance
2 with the provisions of that act.

3 C. A borrower prevailing in any proceeding to
4 enforce the provisions of the Mortgage Relief Act shall be
5 entitled to compensatory damages, punitive damages, costs and
6 reasonable attorney fees.

7 SECTION 6. EMERGENCY.--It is necessary for the public
8 peace, health and safety that this act take effect immediately.