

1 SENATE BILL 46

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Katy M. Duhigg

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10 AN ACT

11 RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE WRONGFUL
12 FORECLOSURE PROTECTION ACT; DEFINING TERMS; PROVIDING
13 REQUIREMENTS FOR FORECLOSURE COMPLAINTS; PROHIBITING CERTAIN
14 CONDUCT; PROVIDING CIVIL REMEDIES.

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

17 SECTION 1. A new Section 58-21C-1 NMSA 1978 is enacted to
18 read:

19 "58-21C-1. [NEW MATERIAL] SHORT TITLE.--Chapter 58,
20 Article 21C NMSA 1978 may be cited as the "Wrongful Foreclosure
21 Protection Act"."

22 SECTION 2. A new Section 58-21C-2 NMSA 1978 is enacted to
23 read:

24 "58-21C-2. [NEW MATERIAL] DEFINITIONS.--As used in the
25 Wrongful Foreclosure Protection Act:

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underscored material = new
[bracketed material] = delete

1 A. "borrower" means a person who is liable for a
2 home loan or who is alleged to be liable for a home loan;

3 B. "home loan" means a loan, including an open-end
4 credit plan, a reverse mortgage transaction or the
5 modification, novation or reaffirmation of any such loan, where
6 the principal amount does not exceed the conforming loan size
7 limit for a single-family dwelling as established by the
8 federal national mortgage association and where the loan is
9 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 C. "homeowner" means a person who owns the property
21 that is subject to a foreclosure suit or home loan or who is
22 alleged to own the property that is subject to a foreclosure
23 suit or home loan;

24 D. "manufactured home" means a structure,
25 transportable in one or more sections, that in the traveling

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~~[bracketed material]~~ = delete

1 mode is eight body feet or more in width or forty body feet or
2 more in length or, when erected on site, is three hundred
3 twenty or more square feet and that is built on a permanent
4 chassis and designed to be used as a dwelling with a permanent
5 foundation when erected on land secured in conjunction with the
6 real property on which the manufactured home is located and
7 connected to the required utilities and includes the plumbing,
8 heating, air conditioning and electrical systems contained
9 therein. "Manufactured home" includes any structure that meets
10 all the requirements of this subsection except the size
11 requirements and with respect to which the manufacturer
12 voluntarily files a certification required by the secretary of
13 the federal department of housing and urban development and
14 complies with the standards established under the federal
15 National Manufactured Housing Construction and Safety Standards
16 Act of 1974. "Manufactured home" does not include rental
17 property, second homes or manufactured homes when not secured
18 in conjunction with the real property on which the manufactured
19 home is located;

20 E. "misleading statement" means an oral or written
21 representation or omission of any kind that is false, is
22 misleading or tends to mislead any person, including any court
23 official, and that could be or is material to the
24 enforceability of a home loan or the outcome sought or obtained
25 in the foreclosure judgment;

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underscoring material = new
~~[bracketed material] = delete~~

1 F. "person" means a natural person, corporation,
2 trust, partnership, association, cooperative association, club,
3 company, firm, joint venture, syndicate and any representative,
4 agent or assignee of that person or entity; and

5 G. "time-barred" means a home loan that is
6 unenforceable because the time for filing a lawsuit in New
7 Mexico to enforce the home loan has expired."

8 SECTION 3. A new Section 58-21C-3 NMSA 1978 is enacted to
9 read:

10 "58-21C-3. [NEW MATERIAL] FORECLOSURE COMPLAINTS--
11 REQUIREMENTS.--In addition to any other requirement provided by
12 law, a complaint for foreclosure shall include:

13 A. the amount of principal and interest currently
14 owed on the home loan;

15 B. the amount of any additional fees, costs or
16 sums, other than principal and interest, currently owed on the
17 home loan;

18 C. the date of the first default that forms the
19 basis of the foreclosure complaint;

20 D. the date of the last payment made and, if
21 applicable, the date of the last payment that was attempted to
22 be made;

23 E. the dates of all instances in which the home
24 loan was accelerated or in which the periodic payments owed on
25 the home loan were demanded to be repaid at once;

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underscoring material = new
[bracketed material] = delete

1 F. the dates of all instances in which the home
2 loan was decelerated or in which the borrower or homeowner was
3 allowed to resume periodic payments after a demand for
4 repayment of the full amount of the home loan had been made;

5 G. whether the borrower or homeowner has applied
6 for loss mitigation options and whether any requests for loss
7 mitigation are pending at the time of filing; and

8 H. whether the home loan is time-barred or the
9 person filing to enforce the home loan has reason to believe
10 the home loan may be time-barred."

11 SECTION 4. A new Section 58-21C-4 NMSA 1978 is enacted to
12 read:

13 "58-21C-4. [NEW MATERIAL] PROHIBITED CONDUCT.--

14 A. A person shall not make a misleading statement
15 or omission of fact or law in a complaint for foreclosure of a
16 home loan or in any motion for summary or default judgment
17 filed when seeking foreclosure of a home loan.

18 B. A person shall not obtain or attempt to obtain
19 from any borrower or homeowner any payment, admission,
20 affirmation, acknowledgment, promise to pay or waiver of any
21 claims or defenses related to any home loan that the person
22 knows or has reason to know is time-barred, unless the person
23 first discloses clearly and conspicuously the following
24 information to the borrower or homeowner in writing:

25 (1) that the home loan is or may be

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1 unenforceable through a lawsuit because the time for filing has
2 expired or may have expired;

3 (2) that the borrower or homeowner cannot be
4 required to pay the home loan through a lawsuit if the home
5 loan is time-barred;

6 (3) that the borrower or homeowner is not
7 required by the law to make any admission, affirmation,
8 acknowledgment of, payment or new promise to pay the home loan;
9 or to waive any of the borrower's or homeowner's rights with
10 regard to the effect of the running of any applicable statute
11 of limitations; and

12 (4) an explanation of the legal consequences
13 of any payment or promise of payment, admission, affirmation or
14 acknowledgment of the home loan; or the waiver of the
15 borrower's or homeowner's legal rights or claims with regard to
16 the revival of an otherwise time-barred home loan."

17 SECTION 5. A new Section 58-21C-5 NMSA 1978 is enacted to
18 read:

19 "58-21C-5. [NEW MATERIAL] CIVIL ACTION--REMEDIES.--

20 A. A borrower, a homeowner or the representative of
21 a borrower's estate or a homeowner's estate may bring a civil
22 action for a violation of the Wrongful Foreclosure Protection
23 Act to recover or obtain:

24 (1) actual damages, including compensatory,
25 consequential and incidental damages;

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1 (2) additional statutory damages equal to five
2 thousand dollars (\$5,000) or ten percent of the amount of the
3 loan, judgment or lien, whichever is higher, for each discrete
4 violation;

5 (3) punitive damages for violations that are
6 willful, malicious or reckless;

7 (4) costs and reasonable attorney fees paid or
8 incurred, as determined by the court; and

9 (5) injunctive, declaratory and other such
10 relief as the court deems appropriate in an action to enforce
11 compliance with the Wrongful Foreclosure Protection Act.

12 B. The civil action and remedies provided in this
13 section are not exclusive and are in addition to any other
14 action or remedies available to a borrower under any other
15 applicable law.

16 C. A civil action based on this section need not be
17 brought in the foreclosure suit and may be brought as a
18 counterclaim in the foreclosure suit or as a separate claim in
19 a separate proceeding.

20 D. A claim or civil action based on this section
21 shall be brought no later than four years after the date of the
22 entry of the judgment or the date of the foreclosure sale for
23 the property or, if no judgment is obtained or no sale takes
24 place, four years after the date of the violation.

25 E. In a civil action based on this section, a

1 defendant to a claimed misleading-statement violation of the
2 Wrongful Foreclosure Protection Act shall not rely on a defense
3 of litigation privilege or other common-law assertion that the
4 misleading statements are not actionable because they were made
5 in the context of a lawsuit."

6 SECTION 6. A new Section 58-21C-6 NMSA 1978 is enacted to
7 read:

8 "58-21C-6. [NEW MATERIAL] LIBERAL INTERPRETATION--
9 CONFLICT.--The Wrongful Foreclosure Protection Act shall be
10 liberally construed to carry out its purpose. In the event of
11 a conflict between a requirement of the Wrongful Foreclosure
12 Protection Act and a requirement of the Home Loan Protection
13 Act, the requirement of the Home Loan Protection Act shall
14 control."

15 SECTION 7. A new Section 58-21C-7 NMSA 1978 is enacted to
16 read:

17 "58-21C-7. [NEW MATERIAL] PROSPECTIVE APPLICATION.--
18 Claims arising solely from acts or omissions that occurred
19 prior to the effective date of this 2023 act may not be brought
20 pursuant to the Wrongful Foreclosure Protection Act."