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SENATE BILL 200

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Mark Boitano

AN ACT

RELATING TO FORECLOSURES; 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. Except as provided in Subsection F of this
16 section, a creditor or a creditor's assignee of a home loan
17 that has the legal right to foreclose shall, in a foreclosure,
18 use the judicial foreclosure procedures provided by law. In
19 such a proceeding, the borrower may assert the nonexistence of
20 a default and any other claim or defense to acceleration and
21 foreclosure, including any based on a violation of the Home
22 Loan Protection Act, though no such claim or defense shall be
23 deemed a compulsory counterclaim.

24 F. The Home Loan Protection Act shall not be deemed
25 to impair:

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(1) a creditor's or assignee's rights pursuant to the Deed of Trust Act, including the right to enforce a deed of trust using a trustee's power of sale; or

(2) a borrower's right to assert any claim or defense to a trustee's sale, including any defense pursuant to the Home Loan Protection Act."