



Sen. Jacqueline Y. Collins

**Filed: 11/19/2008**

09500HB2973sam004

LRB095 06413 MJR 53688 a

1 AMENDMENT TO HOUSE BILL 2973

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2973, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 1. Short title. This Act may be cited as the  
6 Homeowner Protection Act.

7 Section 5. Purpose and construction. The purpose of this  
8 Act is to protect and help homeowners and communities avoid the  
9 devastating effects of foreclosure. This Act is to be construed  
10 as a borrower protection statute. This Act shall be liberally  
11 construed to effectuate its purpose.

12 Section 10. Definitions. As used in this Act:

13 "Approved counseling agency" means a housing counseling  
14 agency approved by the U.S. Department of Housing and Urban  
15 Development.

1 "Borrower" means a natural person who seeks or obtains a  
2 home loan.

3 "Consumer reporting agency" shall have the same meaning as  
4 that term is defined in the federal Fair Credit Reporting Act.

5 "Delinquent" means past due with respect to payments on a  
6 home loan.

7 "Department" means the Department of Financial and  
8 Professional Regulation.

9 "Home loan" means a loan to or for the benefit of any  
10 natural person made primarily for personal, family, or  
11 household use, primarily secured by either a mortgage on  
12 residential real property, certificates of stock, or other  
13 evidence of ownership interests in and proprietary leases from  
14 corporations, partnerships, or limited liability companies  
15 formed for the purpose of cooperative ownership of residential  
16 real property, all located in Illinois. "Home loan" does not  
17 include any loan used to finance a home in which the borrower  
18 or the borrower's immediate family does not intend to reside.

19 "Lender" means any person, partnership, association,  
20 corporation, or any other entity who either transfers, offers,  
21 lends, or invests money in home loans.

22 "Secretary" means the Secretary of Financial and  
23 Professional Regulation or other person authorized to act in  
24 the Secretary's stead.

25 "Servicer" means any entity chartered under the Illinois  
26 Banking Act, the Savings Bank Act, the Illinois Credit Union

1 Act, or the Illinois Savings and Loan Act of 1985 and any  
2 person or entity licensed under the Residential Mortgage  
3 License Act of 1987, the Consumer Installment Loan Act, or the  
4 Sales Finance Agency Act who is responsible for the collection  
5 or remittance for, or has the right or obligation to collect or  
6 remit for, any lender, note owner, or note holder for a  
7 lender's own account of payments, interest, principal, and  
8 escrow items such as hazard insurance and taxes on a  
9 residential mortgage loan in accordance with the terms of the  
10 home loan, including loan payment follow up, delinquency loan  
11 follow up, loan analysis, and any notifications to the borrower  
12 that are necessary to enable the borrower to keep the loan  
13 current and in good standing.

14 "Sustainable loan workout plan" means a plan that the  
15 parties believe shall enable the borrower to stay current on  
16 his or her mortgage payments for the foreseeable future when  
17 taking into account the borrower's income and existing and  
18 foreseeable debts. A sustainable loan workout plan may include,  
19 but is not limited to, (1) a temporary suspension of payments,  
20 (2) a lengthened loan term, (3) a lowered or frozen interest  
21 rate, (4) a principal write down, (5) a repayment plan to pay  
22 the existing loan in full, (6) deferred payments, or (7)  
23 refinancing into a new affordable loan.

24 Section 15. Initial one-time grace period. No lender,  
25 servicer, or lender's agent shall institute legal action under

1 Part 15 of Article XV of the Code of Civil Procedure with  
2 respect to a home loan at any time during the first 45 days of  
3 delinquency. A borrower is entitled to only one 45-day period  
4 of forbearance under this Section per subject loan. A  
5 borrower's right to a 45-day period of forbearance under this  
6 Section is deemed to have been exercised as of the 46th  
7 consecutive day of delinquency.

8 Section 20. One-time notice and counseling grace period.

9 (a) Notwithstanding any provision to the contrary, with  
10 respect to a particular home loan, a lender, servicer, or  
11 lender's agent need comply with the procedures and forbearances  
12 described in this Section only once per subject loan.

13 (b) Except for home loans in which any borrower has filed  
14 for relief under the United States Bankruptcy Code, if a home  
15 loan becomes delinquent by more than 45 days, the lender,  
16 servicer, or lender's agent shall send via certified U.S. mail,  
17 return receipt requested, a notice advising the borrower that  
18 he or she may wish to seek approved housing counseling.

19 At the same time, the lender, servicer, or lender's agent  
20 shall send the notice via at least one of the following means:  
21 regular U.S. mail, express or overnight mail, personal e-mail,  
22 or personal fax machine. Neither the lender, servicer, nor  
23 lender's agent shall institute legal action under Part 15 of  
24 Article XV of the Code of Civil Procedure before mailing the  
25 notice described in this subsection (b).

1           The notice required in this subsection (b) shall state the  
2 date on which the notice was mailed, shall be headed in bold  
3 14-point type "GRACE PERIOD NOTICE", and shall state the  
4 following in 14-point type: "YOUR LOAN IS OR WAS MORE THAN 45  
5 DAYS PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT  
6 MAY BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING  
7 COUNSELING. YOU HAVE A GRACE PERIOD OF 45 DAYS FROM THE DATE OF  
8 THIS FORM TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE  
9 GRACE PERIOD, THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION  
10 AGAINST YOU. A LIST OF APPROVED COUNSELING AGENCIES MAY BE  
11 OBTAINED FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND  
12 PROFESSIONAL REGULATION."

13           The notice shall also list the Department's current  
14 consumer hotline, the Department's website, and the telephone  
15 number, fax number, and mailing address of the servicer's loss  
16 mitigation department. No language, other than the language  
17 prescribed in this subsection (b), shall be included in the  
18 notice. The requirements of this subsection (b) shall be deemed  
19 satisfied if the language and format prescribed in this  
20 subsection is included in a counseling notification required  
21 under federal law.

22           (c) Upon mailing the notice provided for under subsection  
23 (b) of this Section, neither the lender, servicer, nor lender's  
24 agent shall institute legal action under Part 15 of Article XV  
25 of the Code of Civil Procedure for 45 days.

26           (d) If, within the 45-day period provided under subsection

1 (c) of this Section, an approved counseling agency provides  
2 written notice to the lender, servicer, or lender's agent that  
3 the borrower is seeking approved counseling services, then the  
4 lender, servicer, or lender's agent must not institute legal  
5 action under Part 15 of Article XV of the Code of Civil  
6 Procedure for 45 days after the date of that notice. During the  
7 45-day period provided under this subsection (d), the borrower  
8 or counselor or both may prepare and proffer to the lender,  
9 servicer, or lender's agent a proposed sustainable loan workout  
10 plan. The lender, servicer, or lender's agent will then  
11 determine whether to accept the proposed sustainable loan  
12 workout plan. If the lender, servicer, or lender's agent and  
13 the borrower agree to a sustainable loan workout plan, then the  
14 lender, servicer, or lender's agent shall not institute legal  
15 action under Part 15 of Article XV of the Code of Civil  
16 Procedure for as long as the sustainable loan workout plan is  
17 complied with by the borrower.

18 The agreed sustainable loan workout plan and any  
19 modifications thereto must be in writing and signed by the  
20 lender, servicer, or lender's agent and the borrower.

21 Upon written notice to the lender, servicer, or lender's  
22 agent, the borrower may change approved counseling agencies,  
23 but such a change does not entitle the borrower to any  
24 additional period of forbearance.

25 (e) If the borrower fails to comply with the sustainable  
26 loan workout plan, then nothing in this Section shall be

1 construed to impair the legal right of the lender, servicer, or  
2 lender's agent to enforce the contract.

3 (f) A counselor employed by a housing counseling agency or  
4 the housing counseling agency that in good faith provides  
5 counseling shall not be liable to a lender, servicer, lender's  
6 agent, or borrower for civil damages, except for willful or  
7 wanton misconduct on the part of the counselor in providing the  
8 counseling.

9 Section 25. Delinquent loans.

10 (a) Loans that are delinquent by 45 days or less as of the  
11 effective date of this Act shall be entitled to the 45-day  
12 period of forbearance prescribed in Section 15 of this Act. The  
13 45-day period of forbearance shall begin on the effective date  
14 of this Act. After the 45-day period of forbearance, the  
15 borrower shall be entitled to all the protections and  
16 procedures period provided for in Section 20 of this Act.

17 (b) Loans that are delinquent by more than 45 days as of  
18 the effective date of this Act shall not be entitled to the  
19 45-day period of forbearance provided for in Section 15 of this  
20 Act. The borrower shall be entitled to all protections and  
21 procedures provided for in Section 20 of this Act.

22 Section 30. Reports to consumer reporting agencies. A  
23 lender, servicer, or lender's agent that provides information  
24 to a consumer reporting agency about a borrower who is or has

1 been in a period of forbearance provided under this Act shall  
2 include in the report to the consumer reporting agency that the  
3 borrower is or was in a statutorily guaranteed period of  
4 forbearance and shall list the dates of the forbearance.

5 Section 35. Excess demand for counseling. If the Secretary  
6 finds that the demand for counseling services in any particular  
7 geographic area exceeds the number of available approved  
8 counseling agencies, then he or she may certify other persons  
9 or entities as approved counseling agencies. Except as provided  
10 for in this Section, no for-profit entities may be certified as  
11 approved counseling agencies.

12 Section 40. Enforcement.

13 (a) The Secretary shall have the power to issue orders  
14 against any person or entity if the Secretary has reasonable  
15 cause to believe that a violation of this Act has occurred, is  
16 occurring, or is about to occur, if any person has violated, is  
17 violating, or is about to violate any law, rule, order or  
18 written agreement with the Secretary, or for the purpose of  
19 administering the provisions of this Act and any rule  
20 promulgated in accordance with this Act.

21 (b) The Secretary may impose civil penalties of up to  
22 \$1,000 against any person for each violation of any provision  
23 of this Act, any rule promulgated in accordance with this Act,  
24 or any order of the Secretary. The Secretary shall also have



1 the power to subpoena witnesses, to administer an oath, to  
2 examine any person under oath, and to require the production of  
3 any relevant books, papers, accounts, and documents in the  
4 course of and pursuant to any investigation being conducted or  
5 any action being taken by the Secretary with respect to any  
6 matter relating to the duties imposed upon, or the powers  
7 vested in, the Secretary under the provisions of this Act or  
8 any rule promulgated in accordance with this Act.

9 (c) Any actions taken by the Secretary pursuant to this  
10 Section shall be done in accordance with the Illinois  
11 Administrative Procedure Act.

12 Section 45. Rulemaking. The Department may adopt rules  
13 necessary for implementation and administration of this Act.

14 Section 50. Judicial review. All final administrative  
15 decisions under this Act are subject to judicial review  
16 pursuant to the provisions of the Administrative Review Law and  
17 any rules adopted pursuant thereto.

18 Section 55. Waiver prohibited. There shall be no waiver of  
19 any provision of this Act.

20 Section 65. Compliance. Compliance with this Act by a  
21 lender, lender's agent, or servicer shall not negatively impact  
22 the Department's ratings of the lender, lender's agent, or

1 servicer with respect to bad debt collection or calculation  
2 standards or policies.

3 Section 70. Repealer. This Act is repealed on December 31,  
4 2010.

5 Section 97. Severability. The provisions of this Act are  
6 severable under Section 1.31 of the Statute on Statutes.

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.".