



Sen. Jacqueline Y. Collins

Filed: 11/20/2008

09500HB2973sam007

LRB095 06413 MJR 53727 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 5. The Code of Civil Procedure is amended by
6 adding Section 15-1502.5 as follows:

7 (735 ILCS 5/15-1502.5 new)

8 Sec. 15-1502.5. Homeowner protection.

9 (a) As used in this Section:

10 "Approved counseling agency" means a housing counseling
11 agency approved by the U.S. Department of Housing and Urban
12 Development.

13 "Delinquent" means past due with respect to a payment on a
14 mortgage secured by residential real estate.

15 "Department" means the Department of Financial and
16 Professional Regulation.

1 "Secretary" means the Secretary of Financial and
2 Professional Regulation or other person authorized to act in
3 the Secretary's stead.

4 "Sustainable loan workout plan" means a plan that the
5 mortgagor and approved counseling agency believe shall enable
6 the mortgagor to stay current on his or her mortgage payments
7 for the foreseeable future when taking into account the
8 mortgagor income and existing and foreseeable debts. A
9 sustainable loan workout plan may include, but is not limited
10 to, (1) a temporary suspension of payments, (2) a lengthened
11 loan term, (3) a lowered or frozen interest rate, (4) a
12 principal write down, (5) a repayment plan to pay the existing
13 loan in full, (6) deferred payments, or (7) refinancing into a
14 new affordable loan.

15 (b) Except in the circumstance in which a mortgagor has
16 filed a petition for relief under the United States Bankruptcy
17 Code, no mortgagee shall file a complaint to foreclose a
18 mortgage secured by residential real estate until the
19 requirements of this Section have been satisfied.

20 (c) Notwithstanding any other provision to the contrary,
21 with respect to a particular mortgage secured by residential
22 real estate, the procedures and forbearances described in this
23 Section apply only once per subject mortgage.

24 Except for mortgages secured by residential real estate in
25 which any mortgagor has filed for relief under the United
26 States Bankruptcy Code, if a mortgage secured by residential

1 real estate becomes delinquent by more than 30 days the
2 mortgagee shall send via U.S. mail a notice advising the
3 mortgagor that he or she may wish to seek approved housing
4 counseling. Notwithstanding anything to the contrary in this
5 Section, nothing shall preclude the mortgagor and mortgagee
6 from communicating with each other during the initial 30 days
7 of delinquency or reaching agreement on a sustainable loan
8 workout plan, or both.

9 No foreclosure action under Part 15 of Article XV of the
10 Code of Civil Procedure shall be instituted on a mortgage
11 secured by residential real estate before mailing the notice
12 described in this subsection (c).

13 The notice required in this subsection (c) shall state the
14 date on which the notice was mailed, shall be headed in bold
15 14-point type "GRACE PERIOD NOTICE", and shall state the
16 following in 14-point type: "YOUR LOAN IS MORE THAN 30 DAYS
17 PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY
18 BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING COUNSELING.
19 YOU HAVE A GRACE PERIOD OF 30 DAYS FROM THE DATE OF THIS NOTICE
20 TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE GRACE PERIOD,
21 THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION AGAINST YOU.
22 A LIST OF APPROVED COUNSELING AGENCIES MAY BE OBTAINED FROM THE
23 ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION."

24 The notice shall also list the Department's current
25 consumer hotline, the Department's website, and the telephone
26 number, fax number, and mailing address of the mortgagee. No

1 language, other than language substantially similar to the
2 language prescribed in this subsection (c), shall be included
3 in the notice. Notwithstanding any other provision to the
4 contrary, the grace period notice required by this subsection
5 (c) may be combined with a counseling notification required
6 under federal law.

7 The sending of the notice required under this subsection
8 (c) means depositing or causing to be deposited into the United
9 States mail an envelope with first-class postage prepaid that
10 contains the document to be delivered. The envelope shall be
11 addressed to the mortgagor at the common address of the
12 residential real estate securing the mortgage.

13 (d) Until 30 days after mailing the notice provided for
14 under subsection (c) of this Section, no legal action shall be
15 instituted under Part 15 of Article XV of the Code of Civil
16 Procedure.

17 (e) If, within the 30-day period provided under subsection
18 (d) of this Section, an approved counseling agency provides
19 written notice to the mortgagee that the mortgagor is seeking
20 approved counseling services, then no legal action under Part
21 15 of Article XV of the Code of Civil Procedure shall be
22 instituted for 30 days after the date of that notice. The date
23 that such notice is sent shall be stated in the notice, and
24 shall be sent to the address or fax number contained in the
25 Grace Period Notice required under subsection (c) of this
26 Section. During the 30-day period provided under this

1 subsection (e), the mortgagor or counselor or both may prepare
2 and proffer to the mortgagee a proposed sustainable loan
3 workout plan. The mortgagee will then determine whether to
4 accept the proposed sustainable loan workout plan. If the
5 mortgagee and the mortgagor agree to a sustainable loan workout
6 plan, then no legal action under Part 15 of Article XV of the
7 Code of Civil Procedure shall be instituted for as long as the
8 sustainable loan workout plan is complied with by the
9 mortgagor.

10 The agreed sustainable loan workout plan and any
11 modifications thereto must be in writing and signed by the
12 mortgagee and the mortgagor.

13 Upon written notice to the mortgagee, the mortgagor may
14 change approved counseling agencies, but such a change does not
15 entitle the mortgagor to any additional period of forbearance.

16 (f) If the mortgagor fails to comply with the sustainable
17 loan workout plan, then nothing in this Section shall be
18 construed to impair the legal rights of the mortgagee to
19 enforce the contract.

20 (g) A counselor employed by a housing counseling agency or
21 the housing counseling agency that in good faith provides
22 counseling shall not be liable to a mortgagee or mortgagor for
23 civil damages, except for willful or wanton misconduct on the
24 part of the counselor in providing the counseling.

25 (h) If the Secretary finds that the demand for counseling
26 services in any particular geographic area exceeds the number

1 of available approved counseling agencies, then he or she may
2 certify other persons or entities as approved counseling
3 agencies. Notwithstanding the provisions in this Section, no
4 for-profit entities may be certified as approved counseling
5 agencies. Rulemaking authority to implement this amendatory
6 Act of the 95th General Assembly, if any, is conditioned on the
7 rules being adopted in accordance with all provisions of the
8 Illinois Administrative Procedure Act and all rules and
9 procedures of the Joint Committee on Administrative Rules; any
10 purported rule not so adopted, for whatever reason, is
11 unauthorized.

12 (i) There shall be no waiver of any provision of this
13 Section.

14 (j) It is the General Assembly's intent that compliance
15 with this Section shall not prejudice a mortgagee in ratings of
16 its bad debt collection or calculation standards or policies.

17 (k) This Section shall not apply to mortgages securing
18 residential real estate that were issued or originated on or
19 after the effective date of this amendatory Act of the 95th
20 General Assembly.

21 (l) This Section shall not apply, or shall cease to apply,
22 to residential real estate that is not occupied as a principal
23 residence by the mortgagor.

24 (m) This Section is repealed 2 years after the effective
25 date of this amendatory Act of the 95th General Assembly.

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

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.".