

111TH CONGRESS
1ST SESSION

H. R. 1123

To require the filing of certain information regarding a residential mortgage
in any proceeding for foreclosure of the mortgage.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 2009

Ms. KAPTUR (for herself and Mr. CONYERS) introduced the following bill;
which was referred to the Committee on Financial Services

A BILL

To require the filing of certain information regarding a residential mortgage in any proceeding for foreclosure of the mortgage.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Produce the Note Act
5 of 2009”.

6 **SEC. 2. REQUIRED INFORMATION AND NOTICE.**

7 Notwithstanding any other provision of State or Fed-
8 eral law, no foreclosure, whether judicial or nonjudicial,
9 may be commenced with respect to a covered residential

1 mortgage unless the person commencing the foreclosure
2 complies with all of the following requirements:

3 (1) SUBMISSION OF INFORMATION.—The per-
4 son commencing the foreclosure shall submit to the
5 court, in the case of a judicial foreclosure, or to the
6 office of the State or other subdivision of the State
7 to which notice of default, foreclosure, or sale of the
8 foreclosed property is required under State law to be
9 submitted, in the case of a nonjudicial foreclosure,
10 a report prepared by an independent party that in-
11 cludes the following information:

12 (A) A statement of findings as to whether
13 the covered residential mortgage was made and
14 serviced in compliance with the terms of, and
15 regulations under, the following laws:

16 (i) The Truth in Lending Act (15
17 U.S.C. 1601) and Regulation Z of the
18 Board of Governors of the Federal Reserve
19 System under such Act.

20 (ii) The Equal Credit Opportunity Act
21 (15 U.S.C. 1691 et seq.) and Regulation B
22 of the Board of Governors of the Federal
23 Reserve System under such Act.

24 (iii) The Fair Debt Collection Prac-
25 tices Act (15 U.S.C. 1692 et seq.).

1 (iv) The Federal Fair Credit Report-
2 ing Act (15 U.S.C. 1681 et seq.).

3 (v) The Real Estate Settlement Proce-
4 dures Act of 1974 (12 U.S.C. 2601 et
5 seq.) and Regulation X of the Secretary of
6 Housing and Urban Development under
7 such Act.

8 (vi) The Flood Disaster Protection
9 Act of 1973 (42 U.S.C. 2002 et seq.).

10 (vii) The Fair Housing Act (42
11 U.S.C. 3601 et seq.).

12 (viii) The Home Mortgage Disclosure
13 Act of 1975 (12 U.S.C. 2801 et seq.).

14 (ix) The Financial Institutions Re-
15 form, Recovery, and Enforcement Act of
16 1989 (Public Law 101–73).

17 (x) Any applicable provisions of State
18 and local law relating to real estate lending
19 or consumer protection.

20 (B) Certification of any mortgage modi-
21 fication efforts that were employed and any of-
22 fers made to the mortgagor by the person com-
23 mencing the foreclosure.

24 (C) If any noncompliance is found pursu-
25 ant to subparagraph (A), a statement as to

1 whether the violations are such that the mort-
2 gator should be afforded an extended right, be-
3 yond the period permitted under State law—

4 (i) to rescind the mortgage in defense
5 of the foreclosure; or

6 (ii) to redeem the mortgage.

7 (D) Identification of—

8 (i) the actual holder of the mortgage
9 note, the originating lender for the mort-
10 gage and all subsequent assignees, and
11 other all parties who have an interest in
12 the real estate that is subject to the mort-
13 gage or in the mortgage or the proceeds of
14 the mortgage; and

15 (ii) any parties identified pursuant to
16 clause (i) that received any assistance pur-
17 suant to title I of the Emergency Eco-
18 nomic Stabilization Act of 2008 (12 U.S.C.
19 5211 et seq.) and the amount of any such
20 assistance received.

21 (E) A statement of whether a bona fide de-
22 fault on the covered mortgage has occurred.

23 (F) A description of any hardship cir-
24 cumstances regarding the economic cir-
25 cumstances of the mortgagor that would be rel-

1 evant to a determination by the mortgagee of
2 whether to modify the mortgage.

3 (G) A statement of whether the mortgage
4 is insured under title II of the National Hous-
5 ing Act (12 U.S.C. 1707 et seq.).

6 (H) A statement of whether the mortgage
7 is, or any terms of the mortgage are, unfair or
8 constitute an unfair or deceptive act or practice
9 violating the Federal Trade Commission Act
10 (15 U.S.C. 41 et seq.), and if so, a description
11 of the unfairness or the unfair or deceptive act
12 or practice.

13 (I) A statement of whether any material
14 misrepresentations were made that fraudulently
15 induced the mortgagor to enter into the trans-
16 action to his or her detriment, and if so, a de-
17 scription of such misrepresentation.

18 (J) Identification of any offsets to the
19 creditor claim on the mortgage.

20 (K) A statement of the racial characteris-
21 tics, gender, census tract, and income level of
22 the mortgagor, as such terms are used for pur-
23 poses of compliance with the Home Mortgage
24 Disclosure Act of 1975 (12 U.S.C. 2801 et
25 seq.).

1 (2) REQUIRED NOTIFICATION.—The person
2 commencing the foreclosure shall provide notice to
3 the mortgagor, in writing, not less than 5 days be-
4 fore any action is taken to commence the proceeding
5 or action for foreclosure, and shall certify to the
6 court, in the case of a judicial foreclosure, or to the
7 office of the State or other subdivision of the State
8 to which notice of default, foreclosure, or sale of the
9 foreclosed property is required under State law to be
10 submitted in the case of a nonjudicial foreclosure,
11 that such notice has been provided, that includes the
12 following information:

13 (A) A statement of any rights of the mort-
14 gagor under the applicable laws governing the
15 foreclosure and consumer rights.

16 (B) A statement of any deadlines for filing
17 answers, defenses, or objections to the fore-
18 closure, including those rights of the mortgagor
19 under the Real Estate Settlement Procedures
20 Act of 1974 and any applicable State laws.

21 (C) A statement of any penalties and other
22 consequences for the mortgagor if the mort-
23 gagor does not respond or file answers to the
24 foreclosure.

1 (D) A statement of the amounts claimed to
2 be in arrears under the mortgage and needed to
3 reinstate the account and all associated costs
4 and fees, set forth in itemized and distinct cat-
5 egories, and current and correct contact infor-
6 mation, including telephone numbers, electronic
7 mail addresses, and postal addresses, at which
8 the mortgagor can obtain further information
9 regarding the mortgage account.

10 (E) A description of any additional op-
11 tions, such as mortgage workout, modification,
12 mitigation, and redemption, that might be avail-
13 able to the mortgagor to prevent the foreclosure
14 from proceeding and a description of how the
15 mortgagor can obtain additional information re-
16 garding such options.

17 (F) A statement of the correct names, tele-
18 phone numbers, electronic mail addresses, post-
19 al addresses, and any State licensing numbers
20 of the mortgage holder, the mortgage servicer,
21 and the person or persons authorized to take
22 the actions described pursuant to subparagraph
23 (E).

1 **SEC. 3. DEFINITIONS.**

2 For purposes of this Act, the following definitions
3 shall apply:

4 (1) INDEPENDENT PARTY.—The term “inde-
5 pendent party” means, with respect to foreclosure on
6 a covered residential mortgage, an individual who
7 has no interest in, or affiliation with, any party in-
8 volved in such foreclosure or with the covered resi-
9 dential mortgage involved in such foreclosure, in-
10 cluding any party that owns, manages, controls, or
11 directs such an involved party, any party that is
12 owned, managed, controlled, or directed by such an
13 involved party, or any party that is under common
14 ownership, management, control, or direction with
15 such an involved party.

16 (2) COVERED RESIDENTIAL MORTGAGE.—The
17 term “covered residential mortgage” means a mort-
18 gage that meets the following requirements:

19 (A) The property securing the obligation
20 under the mortgage shall be a one- to four-fam-
21 ily dwelling, including a condominium or a
22 share in a cooperative ownership housing asso-
23 ciation.

24 (B) The mortgagor under the mortgage
25 shall occupy the property securing the obliga-

tion under the mortgage as his or her principal residence.

(3) MORTGAGE.—

(A) IN GENERAL.—The term “mortgage” means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real, personal, or mixed), or any interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

(B) CONDOMINIUMS AND COOPERATIVES.—Such term includes a first mortgage given to secure—

(i) the unpaid purchase price of a fee interest in, or a long-term leasehold interest in, a one-family unit in a multifamily project, including a project in which the dwelling units are attached or are manufactured housing units, semi-detached, or detached, and an undivided interest in the

1 common areas and facilities that serve the
2 project; or

3 (ii) repayment of a loan made to fi-
4 nance the purchase of stock or membership
5 in a cooperative housing corporation the
6 permanent occupancy of dwelling units of
7 which is restricted to members of such cor-
8 poration, where the purchase of such stock
9 or membership entitles the purchaser to
10 the permanent occupancy of one of such
11 units.

12 **SEC. 4. RELATION TO STATE LAW.**

13 This Act does not annul, alter, or affect, or exempt
14 any person subject to the provisions of this Act from com-
15 plying with, the laws of any State or subdivision thereof
16 with respect to foreclosure on a residential mortgage, ex-
17 cept to the extent that those laws are inconsistent with
18 any provision of this Act, and then only to the extent of
19 the inconsistency. No provision of the laws of any State
20 or subdivision thereof may be determined to be incon-
21 sistent with any provision of this Act if such law is deter-
22 mined to require greater disclosure or notice than is re-
23 quired under this Act or to provide greater protection to
24 the mortgagee than is required under this Act.

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