

111TH CONGRESS
2D SESSION

H. R. 5028

To allow homeowners of moderate-value homes who are subject to mortgage foreclosure proceedings to remain in their homes as renters.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2010

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

A BILL

To allow homeowners of moderate-value homes who are subject to mortgage foreclosure proceedings to remain in their homes as renters.

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 “Right to Rent Act of
5 2010”.

6 **SEC. 2. RIGHT TO RENT HOME SUBJECT TO FORECLOSURE.**

7 (a) EXERCISE OF RIGHT.—If, at any time after no-
8 tice under subsection (b) for an eligible mortgage is pro-
9 vided to the eligible mortgagor and before the commence-
10 ment of the 7-day period that ends on the first date that

1 the foreclosing creditor may first commence or execute
2 such foreclosure pursuant to such notice, the eligible mort-
3 gator under the eligible mortgage that is subject to such
4 foreclosure provides notice in accordance with section 3,
5 notwithstanding such foreclosure or any other interests in
6 the property, the eligible mortgagor may, at the sole op-
7 tion of the eligible mortgagor, continue to occupy the fore-
8 closed property during the 5-year period that begins upon
9 the commencement of such occupancy, subject to the re-
10 quirements of subsection (c).

11 (b) LIMITATION ON TIMING OF FORECLOSURE; NO-
12 TICE OF DEFAULT AND RIGHT TO RENT.—Notwith-
13 standing any other provision of law or any contract, a
14 foreclosure of an eligible mortgage may not be commenced
15 or executed before the expiration of the 25-day period (not
16 including Saturdays, Sundays, and legal public holidays)
17 beginning upon the receipt, by the eligible mortgagor, of
18 written notice provided by the foreclosing creditor for the
19 mortgage that—

20 (1) clearly states that—

21 (A) the eligible mortgagor is in default on
22 the mortgage; and

23 (B) foreclosure on the mortgage may or
24 will be commenced on account of such default;

1 (2) clearly states that the eligible mortgagor
2 has the right, notwithstanding foreclosure, to con-
3 tinue to occupy the foreclosed property in accord-
4 ance with this Act, and sets forth the terms of such
5 occupancy under subsections (a) and (c); and

6 (3) clearly identifies the first date, pursuant to
7 this section and any other provisions of law and con-
8 tract, that such foreclosure may be commenced.

9 (c) TERMS OF PERIODIC TENANCY.—Occupancy, by
10 an eligible mortgagor, of a foreclosed property pursuant
11 to subsection (a) shall be under a periodic month-to-month
12 tenancy under which the owner of the property may termi-
13 nate the tenancy for material breach but shall have no
14 authority, at will, to terminate the tenancy during the oc-
15 cupancy pursuant to subsection (a) if the mortgagor—

16 (1) timely pays to the owner of the foreclosed
17 property rent on a monthly basis in the amount of
18 the fair market rent for the property determined in
19 accordance with section 4; and

20 (2) uses property as the principal residence of
21 the mortgagor.

22 **SEC. 3. REQUIRED NOTICE.**

23 With respect to an eligible mortgage for which notice
24 under section 2(b) has been provided, notice in accordance
25 with this section is notice that—

1 (1) is made in writing;

2 (2) is submitted, by a means under which the
3 act of delivery is recorded, to—

4 (A) the court having jurisdiction and venue
5 to conduct the covered foreclosure proceeding
6 for the eligible mortgage or, in the case of non-
7 judicial foreclosure, the court in which an ac-
8 tion is brought pursuant to section 5; and

9 (B) the foreclosing creditor; and

10 (3) states that the eligible mortgagor is exer-
11 cising the authority under section 2(a) to continue
12 to occupy the foreclosed property.

13 **SEC. 4. DETERMINATION OF FAIR MARKET RENT.**

14 (a) INITIAL DETERMINATION.—For purposes of this
15 Act, the fair market rent for a foreclosed property involved
16 in a covered foreclosure proceeding shall be the amount
17 that is determined by an independent appraiser who is li-
18 censed or certified, as applicable, to conduct appraisals in
19 the jurisdiction in which the property is located, who shall
20 be appointed for such purpose by the court conducting
21 such proceeding or hearing an action pursuant to section
22 5.

23 (b) PERIODIC ADJUSTMENTS.—The fair market rent
24 determined under subsection (a) for a foreclosed property
25 shall be adjusted annually to reflect changes in the owners’

1 equivalent rent of primary residence component, for the
2 appropriate city, region, or class of city, as available, of
3 the Consumer Price Index for All Urban Consumers of
4 the Bureau of Labor Statistics of the Department of
5 Labor.

6 (c) REDETERMINATION.—If the owner of a foreclosed
7 property or the eligible mortgagor under the eligible mort-
8 gage requests the court described in subsection (a) to re-
9 determine the fair market rent for a foreclosed property
10 determined pursuant to this section (as such amount may
11 have been adjusted pursuant to subsection (b)) and agrees
12 to pay any costs of such redetermination (including costs
13 of the appraisal involved), the court shall provide for rede-
14 termination of the fair market rent for the foreclosed
15 property in the manner provided under subsection (a), ex-
16 cept that no such redetermination shall be made pursuant
17 to a request under this subsection made before the expira-
18 tion of the 12-month period beginning upon the most re-
19 cent redetermination conducted at the request of the same
20 party.

21 **SEC. 5. NONJUDICIAL FORECLOSURE PROCEEDINGS.**

22 In the case of any covered foreclosure proceeding that
23 is not conducted or administered by a court, the eligible
24 mortgagor may bring an action in an appropriate court
25 of the State in which the foreclosed property is located

1 for a determination of fair market rent for the foreclosed
2 property for purposes of this Act, by filing notice in ac-
3 cordance with section 3 with such court and otherwise
4 complying with the rules of such court.

5 **SEC. 6. NO BAR TO FORECLOSURE.**

6 This Act may not be construed to delay, or otherwise
7 modify, affect, or alter any right of a creditor under an
8 eligible mortgage to foreclose on the mortgage and to sell
9 the foreclosed property in connection with such fore-
10 closure, except that the right of any owner of the property
11 to possession of the property shall be subject to the lease-
12 hold interest established pursuant to section 2(c).

13 **SEC. 7. RIGHT TO REINSTATEMENT.**

14 This Act may not be construed to affect any right
15 of any eligible mortgagor to reinstatement of an eligible
16 mortgage, including any right established under contract
17 or State law.

18 **SEC. 8. JURISDICTION OF FEDERAL COURTS.**

19 At the option of the eligible mortgagor, a proceeding
20 under section 4 or 5 shall be removed to the appropriate
21 district court of the United States in accordance with sec-
22 tion 1441 of title 28, United States Code.

23 **SEC. 9. EFFECT ON STATE LAW.**

24 (a) FORECLOSURE LAWS.—This Act does not annul,
25 alter, affect, or exempt any person subject to the provi-

1 sions of this Act from complying with the laws of any
2 State regarding foreclosure on residential properties, ex-
3 cept to the extent that such laws are inconsistent with any
4 provision of this Act, and then only to the extent of such
5 inconsistency.

6 (b) LANDLORD-TENANT LAWS.—Nothing in this Act
7 may be construed to not annul, alter, affect, or exempt
8 any such tenancy created pursuant to section 2(c) from
9 any applicable State or local laws regarding the rights or
10 responsibilities of landlords or tenants.

11 **SEC. 10. OVERSIGHT BY HUD.**

12 The Secretary of Housing and Urban Development
13 shall—

14 (1) monitor compliance with the requirements
15 under this Act;

16 (2) make available, and provide, appropriate as-
17 sistance to eligible mortgagors in exercising their
18 rights under this Act;

19 (3) conduct outreach activities appropriate to
20 inform eligible mortgagors of the provisions of this
21 Act; and

22 (4) submit to the Congress, not less than annu-
23 ally, reports describing the implementation of this
24 Act, the extent to which this Act is utilized by eligi-

1 ble mortgagors, and any issues regarding such im-
2 plementation or utilization.

3 **SEC. 11. DEFINITIONS.**

4 For purposes of this Act, the following definitions
5 apply:

6 (1) COVERED FORECLOSURE PROCEEDING.—

7 The term “covered foreclosure proceeding” means a
8 foreclosure proceeding with respect to an eligible
9 mortgage, and includes any foreclosure proceeding
10 authorized under the law of the applicable State, in-
11 cluding judicial and non-judicial foreclosure pro-
12 ceedings.

13 (2) ELIGIBLE MORTGAGOR.—The term “eligible
14 mortgagor” means a mortgagor under an eligible
15 mortgage.

16 (3) ELIGIBLE MORTGAGE.—The term “eligible
17 mortgage” means a first or subordinate mortgage—

18 (A) on a property that—

19 (i) is a single family property;

20 (ii) has been used as the principal res-
21 idence of the eligible mortgagor for a pe-
22 riod of not less than 2 years immediately
23 preceding the initiation of the covered fore-
24 closure proceeding involved; and

1 (iii) had a purchase price, at the time
2 purchased by the eligible mortgagor, that
3 is less than the median purchase price for
4 residences that are located in—

5 (I) the same metropolitan statis-
6 tical area; or

7 (II) if the property is not located
8 in a metropolitan statistical area or
9 information for the area is not avail-
10 able, the same State; and

11 (B) that was originated before July 1,
12 2007.

13 For purposes of subparagraph (A)(iii), the median
14 purchase price of residences located within a metro-
15 politan area or State shall be determined according
16 to information collected and made available by the
17 National Association of Realtors for such area or
18 State for the most recently completed month for
19 which such information is available.

20 (4) FORECLOSED PROPERTY.—The term “fore-
21 closed property” means, with respect to a covered
22 foreclosure proceeding, the single family property
23 that is subject to the eligible mortgage being fore-
24 closed under the proceeding.

1 (5) FORECLOSING CREDITOR.—The term “fore-
2 closing creditor” means, with respect to a covered
3 foreclosure proceeding, the creditor that is fore-
4 closing the eligible mortgage through such pro-
5 ceeding.

6 (6) OWNER.—The term “owner” means, with
7 respect to a foreclosed property, the person who has
8 title to the property pursuant to the foreclosure pro-
9 ceeding for the property, and any successor or as-
10 sign of such person.

11 (7) SINGLE FAMILY PROPERTY.—The term
12 “single family property” means—

13 (A) a structure consisting of 1 to 4 dwell-
14 ing units;

15 (B) a dwelling unit in a multi-unit condo-
16 minium property together with an undivided in-
17 terest in the common areas and facilities serv-
18 ing the property; or

19 (C) a dwelling unit in a multi-unit project
20 for which purchase of stock or a membership
21 interest entitles the purchaser to permanent oc-
22 cupancy of that unit.

23 **SEC. 12. APPLICABILITY AND SUNSET.**

24 (a) APPLICABILITY.—Subject to subsection (b), this
25 Act shall apply to any covered foreclosure proceeding that

1 has not been finally adjudicated as of the date of the en-
2 actment of this Act.

3 (b) SUNSET.—This Act shall not apply to any fore-
4 closure proceeding commenced after the expiration of the
5 5-year period beginning on the date of the enactment of
6 this Act.

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