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112TH CONGRESS
2D SESSION

H. R. 6395

To provide homeowners with additional protections and safeguards against foreclosure, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2012

Mr. BACA introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To provide homeowners with additional protections and safeguards against foreclosure, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Foreclosure Accountability and Transparency Act’’.

SEC. 2. DEFINITIONS.

In this Act:

(1) ALTERNATIVE TO FORECLOSURE.—The term ‘‘alternative to foreclosure’’—

(A) means a course of action with respect to a mortgage offered to a borrower as an alternative to a foreclosure action; and

(B) includes a short sale and deed in lieu of foreclosure.

(2) BORROWER.—The term ''borrower'' means a mortgagor who is in default on their covered residential mortgage.

(3) COVERED RESIDENTIAL MORTGAGE.—The term ''covered residential mortgage'' means a federally related mortgage loan, as defined in section 3(1) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602(1)), that is secured by a first or subordinate lien on residential real property.

(4) FORECLOSURE ACTION.—The term ''foreclosure action'' means a judicial or nonjudicial foreclosure.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

SEC. 3. HOMEOWNER BILL OF RIGHTS.

(a) ACTION REQUIRED BEFORE COMMENCING FORECLOSURE.—Notwithstanding any other provision of State or Federal law, no foreclosure action may be commenced with respect to a covered residential mortgage unless the person commencing the foreclosure complies with the following requirements:

(1) NOTICE.—

(A) IN GENERAL.—

(i) NOTIFICATION.—The borrower shall be notified of the foreclosure action that may be taken, and such notice shall provide detailed information that includes the following:

(I) A statement of any rights of the borrower under the applicable laws governing the foreclosure action and consumer rights.

(II) A statement of any deadlines for filing answers, defenses, or objections to the foreclosure action, including those rights of the borrower under the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 note) and any applicable State laws.

(III) A statement of any penalties and other consequences for the borrower if such borrower does not respond or file answers to the foreclosure action.

(IV) A statement of the amounts claimed to be in arrears under the covered residential mortgage and amounts needed to reinstate the account and all associated costs and fees, set forth in itemized and distinct categories.

(V) A statement of current contact information, including telephone numbers, electronic mail addresses, and postal addresses, at which the borrower can obtain further information regarding the mortgage account.

(VI) A description of—

(aa) any additional options, such as a mortgage workout, modification, mitigation, redemption, and other alternatives to foreclosure that might be available to the borrower to prevent the foreclosure action from proceeding; and

(bb) how the borrower can obtain additional information regarding such options.

(VII) A statement of the correct names, telephone numbers, electronic mail addresses, postal addresses, and any State licensing numbers of the mortgage holder, the mortgage servicer, and the person or persons authorized to take the actions described pursuant to subclause (V).

(ii) ACCEPTED MEANS OF NOTIFICATION.—The notification given pursuant to clause (i) shall be made in writing, by electronic mail (if such information is known), by telephone, and by making an in-person visit to the property that secures the loan in connection with the covered residential mortgage.

(B) APPEAL.—

(i) FILING.—The borrower may file an appeal with the Secretary to dispute the accuracy of the information contained in the notice described in subparagraph (A).

(ii) TIMING.—The person commencing the foreclosure shall have 30 days after an appeal is filed under clause (i) to submit to the Secretary documentation supporting the information provided in the notification provided under subparagraph (A)(i).

(iii) DETERMINATION.—The Secretary shall make a determination as to whether or not the information contained in the notice described in subparagraph (A) is accurate and if foreclosure action is permitted not later than 30 days after the documentation is submitted under clause (ii).

(2) HUD CERTIFIED COUNSELORS.—

(A) IN GENERAL.—A borrower notified pursuant to paragraph (1)(A) may seek assistance from a HUD-approved housing counseling agency described under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) to act as their agent in connection with the foreclosure action.

(B) DOCUMENTATION.—If a borrower seeks assistance from a HUD-approved housing counseling agency under subparagraph (A), all information and documentation in connection with the foreclosure action shall be provided to such counseling agency.

(3) HOMEOWNER ACTION.—

(A) APPLICATION.—

(i) IN GENERAL.—A borrower shall have not less than the 60-day period after a notification under paragraph (1)(A) is received to apply for a loan modification or commence an alternative to foreclosure, and no foreclosure action shall be initiated before the end of such period.

(ii) TOLLING.—The 60-day period described in clause (i) shall be tolled during any period of time in which the borrower has filed an appeal pursuant to paragraph (1)(B) and the Secretary, with respect to such appeal, has not made a determination pursuant to clause (iii) of such paragraph.

(B) HOMEOWNER MODIFICATION OR ALTERNATIVES TO FORECLOSURE.—If a borrower applies for a loan modification or submits documentation indicating that such borrower is seeking an alternative to foreclosure during the 60-day period described in subparagraph (A), the foreclosure action may not be initiated against such borrower until reasonable efforts have been made by the person commencing the foreclosure action to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure.

(C) EXPLANATION OF DENIAL.—If a borrower is declared ineligible for a loan modification or alternative to foreclosure, such borrower shall be given an explanation that includes the reasons why such borrower is ineligible.

(b) BAR TO FORECLOSURE ACTIONS.—A violation of this section shall be a bar to a foreclosure action.

(c) CERTIFICATION.—At the completion of a foreclosure action, the person who commenced such action shall certify that all Federal, State, and local laws and regulations were followed with respect to the foreclosure action and submit all applicable documentation (as such term is defined in regulations promulgated by the Secretary to carry out this Act) in connection with such action to the—

(1) borrower who was a party to the foreclosure action;

(2) recorder's office in the municipality that the property that secures the loan in connection with the covered residential mortgage is located; and

(3) Secretary.

(d) RULE OF CONSTRUCTION.—Nothing in this Act may be construed as to require a person commencing a foreclosure action under this section to comply with the requirements under subsection (a) in the case of a borrower who—

(1) was approved for a loan modification in connection with a covered residential mortgage after applying for such modification pursuant to subsection (a)(3)(A);

(2) had the terms of such mortgage modified after such approval; and

(3) is in default on such mortgage.

(e) RELATION TO STATE LAW.—This Act does not annul, alter, or affect, or exempt any person subject to the provisions of this Act from complying with, the laws of any State or subdivision thereof with respect to a foreclosure action on a covered residential mortgage, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. No provision of the laws of any State or subdivision thereof may be determined to be inconsistent with any provision of this Act if such law is determined to require greater disclosure or notice than is required under this Act or to provide greater protection to the borrower than is required under this Act.

(f) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall issue regulations to carry out this Act.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act, and shall apply to covered residential mortgages in which foreclosure action has not commenced.

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