

By: Hernandez

H.B. No. 3426

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the notice required by certain mortgage servicers
3 before foreclosing a contract lien on certain real property;
4 providing civil penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 51, Property Code, is amended by adding
7 Section 51.0022 to read as follows:

8 Sec. 51.0022. PRE-FORECLOSURE REQUIREMENTS FOR CERTAIN
9 MORTGAGE SERVICERS. (a) This section applies to the foreclosure of
10 a contract lien on residential real property occupied by an owner of
11 the property if the mortgagee is a financial institution that
12 requested and received funds from the federal government as
13 provided by the Emergency Economic Stabilization Act of 2008 (Pub.
14 L. No. 110-343).

15 (b) A mortgagee may not accelerate a repayment of a debt
16 secured by a contract lien to which this section applies or post
17 real property for a foreclosure sale under Section 51.002 unless
18 the mortgage servicer, not earlier than the 90th day before the date
19 on which the debt was accelerated or the property is posted for
20 foreclosure or later than the 60th day before that date, sends a
21 notice to the debtor, in the form prescribed under Subsection (h),
22 by regular mail and by certified mail, return receipt requested,
23 that states in 14-point or larger type that the debtor has the right
24 to enter into mediation.

1 (c) A mortgage servicer that gives notice under Subsection
2 (b) must prepare a written affirmation that indicates:

3 (1) the mortgage servicer provided the notice in
4 accordance with Subsection (b); and

5 (2) whether:

6 (A) the mortgage servicer mediated the dispute
7 without resolution;

8 (B) the mortgage servicer mediated the dispute
9 and the debtor failed to comply with a substantive term of an
10 agreement reached in the mediation; or

11 (C) the debtor refused to engage in mediation
12 after receiving notice of the right to mediate the dispute.

13 (d) A debtor is entitled to mediation under this section if
14 the debtor or the debtor's authorized agent sends a written notice
15 indicating the debtor's election to mediate on or before the 30th
16 day after the postmark date on the notice sent by the mortgage
17 servicer by certified mail under Subsection (b). A notice of the
18 debtor's election to mediate may be delivered by hand, e-mailed,
19 faxed, or mailed.

20 (e) If mediation is timely elected by the debtor, the
21 mortgage servicer shall cease all collection activity on the debt
22 until the earlier of:

23 (1) the date on which the mediation is completed; or

24 (2) the 60th day after the date on which the debtor
25 notifies the mortgage servicer of the debtor's election to mediate.

26 (f) A debtor may receive assistance in conducting the
27 mediation from a housing counselor approved by the United States

1 Department of Housing and Urban Development. A formal, in-person
2 mediation may be conducted with the consent of the debtor and the
3 mortgage servicer. If the debtor or mortgage servicer does not
4 consent to a formal mediation, an informal mediation may be
5 conducted through multiple telephone conversations between the
6 mortgage servicer and the debtor. Individuals engaged in a
7 mediation under this section must have actual authority to
8 negotiate the terms, conditions, fees, and other issues surrounding
9 the foreclosure and the underlying debt.

10 (g) A mortgage servicer who violates this section is liable
11 for a person's actual damages arising from the violation and for a
12 civil penalty of not more than \$2,000. A person may file an action
13 to seek injunctive relief for a violation of this section.

14 (h) The Texas Department of Housing and Community Affairs
15 shall prescribe the form of the notice required by Subsection (b).

16 SECTION 2. The changes in law made by this Act apply only to
17 the acceleration of repayment for a debt secured by residential
18 real property or the posting of real property for a foreclosure sale
19 on or after the effective date of this Act. The acceleration of
20 repayment of a debt or the posting of real property for a
21 foreclosure sale before the effective date of this Act is governed
22 by the law in effect immediately before the effective date of this
23 Act, and that law is continued in effect for that purpose.

24 SECTION 3. This Act takes effect September 1, 2009.