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H.B. No. 3589

A BILL TO BE ENTITLED

AN ACT

relating to requiring foreclosure deferment and reset notification on certain residential mortgages.

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

SECTION 1. Subtitle B, Title 5, Property Code, is amended by adding Chapter 51A to read as follows:

CHAPTER 51A. FORECLOSURE DEFERMENT AND RESET NOTIFICATION

FOR CERTAIN RESIDENTIAL MORTGAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51A.001. DEFINITIONS. (a) In this chapter:

(1) "Deferment period trigger date" means:

(A) for a subprime mortgage, the earlier of:

(i) the date of any adjustment or reset of the interest rate on the mortgage; or

(ii) the 60th day after the date on which the debtor is first delinquent on a mortgage payment; and

(B) for a negative amortization mortgage, the date on which the first increase in the minimum monthly payment due under the mortgage occurs.

(2) "Eligible deferred foreclosure mortgage" means a subprime mortgage or a negative amortization mortgage that originated before January 1, 2009, and for which the deferment period trigger date has been reached.

(3) "Finance commission" means the Finance Commission

1 of Texas.

2 (4) "Home loan" has the meaning assigned by Section  
3 343.001, Finance Code.

4 (5) "Mortgage servicer," "mortgagee," and "mortgagor"  
5 have the meanings assigned by Section 51.0001.

6 (6) "Negative amortization mortgage" means a home loan  
7 with the potential for negative amortization of the outstanding  
8 principal balance and under which the minimum monthly payment of  
9 principal and interest required increases after the date of  
10 origination.

11 (7) "Subprime mortgage" means a home loan in which:

12 (A) the difference between the annual percentage  
13 rate for the home loan at its inception and the yield on United  
14 States Treasury securities having comparable periods of maturity to  
15 the home loan is three percentage points or more if the loan is a  
16 first-lien loan, or is more than five percentage points if the loan  
17 is a second-lien loan; or

18 (B) the difference between the annual percentage  
19 rate for the home loan at its inception and the annual yield on  
20 conventional mortgages published by the Board of Governors of the  
21 Federal Reserve System is 1.75 percentage points or more if the loan  
22 is a first-lien loan, or is more than 3.75 percentage points if the  
23 loan is a second-lien loan.

24 (b) For purposes of Subsection (a)(7)(A), the same  
25 procedures and calculation methods applicable to loans that are  
26 subject to reporting requirements under the Home Mortgage  
27 Disclosure Act of 1975 (12 U.S.C. Section 2801 et seq.) shall be

1 used to determine the difference between the annual percentage rate  
2 of a subprime home loan and the treasury yield.

3 [Sections 51A.002-51A.050 reserved for expansion]

4 SUBCHAPTER B. REQUIRED FORECLOSURE DEFERMENT

5 Sec. 51A.051. DEBTOR ELIGIBILITY. A person is eligible for  
6 foreclosure deferment under this chapter if the person:

7 (1) is a debtor obligated under an eligible deferred  
8 foreclosure mortgage;

9 (2) has resided at the residential real property  
10 securing the mortgage loan since the loan was closed and intends to  
11 reside at the property at least until the end of the foreclosure  
12 deferment period;

13 (3) has a current monthly income that, when multiplied  
14 by 12, is less than 200 percent of the median annual income for the  
15 relevant family size in the area of the state in which the property  
16 is located; and

17 (4) during the foreclosure deferment period, responds  
18 to reasonable inquiries from a mortgage servicer or mortgagee with  
19 respect to the mortgage.

20 Sec. 51A.052. RIGHT TO FORECLOSURE DEFERMENT. (a) An  
21 eligible person may defer the initiation of a proceeding to  
22 foreclose an eligible deferred foreclosure mortgage, whether  
23 judicial or nonjudicial, or any action in connection with  
24 proceedings already initiated to foreclose an eligible deferred  
25 foreclosure mortgage, including a foreclosure sale under Section  
26 51.002, until the end of the foreclosure deferment period, in  
27 accordance with this chapter.

1 (b) A debtor who complies with this chapter may defend  
2 against a foreclosure action or bring an action for injunctive  
3 relief to compel compliance with the debtor's rights under this  
4 chapter regarding an eligible deferred foreclosure mortgage.

5 Sec. 51A.053. FORECLOSURE DEFERMENT RIGHTS NOTICE  
6 REQUIRED. (a) Not later than the 30th day before the date on which a  
7 mortgagee or mortgage servicer initiates a foreclosure proceeding  
8 on an eligible deferred foreclosure mortgage, the mortgagee or  
9 mortgage servicer shall notify the debtor, by personal service, of  
10 the debtor's right to defer foreclosure under this chapter.

11 (b) A mortgagee or mortgage servicer that provides notice in  
12 accordance with Subsection (a) shall provide an additional notice  
13 on the 30th day after the date on which each immediately preceding  
14 notice was provided until:

15 (1) the debtor institutes a foreclosure deferment  
16 under this chapter; or

17 (2) the foreclosure becomes final.

18 (c) The finance commission by rule shall provide the content  
19 and format of a notice required by this section. The rules must:

20 (1) ensure that the notice is provided in a manner that  
21 maximizes the likelihood that a debtor will obtain and understand  
22 all of the information necessary to exercise the right to defer a  
23 foreclosure under this chapter; and

24 (2) specify:

25 (A) instructions and procedures for obtaining a  
26 foreclosure deferment, including a sample foreclosure deferment  
27 initiation notice form, a property and debtor identification form,

1 and a certification form required to initiate a foreclosure  
2 deferment;

3 (B) contact information for the mortgagee and  
4 mortgage servicer or any other third party involved in the  
5 foreclosure proceedings, including state or local officials; and

6 (C) contact information for obtaining counseling  
7 concerning the exercise of foreclosure deferment from a counselor  
8 approved by the finance commission.

9 Sec. 51A.054. PROCEDURES FOR FORECLOSURE DEFERMENT. To  
10 defer a foreclosure under this chapter, a debtor shall provide to  
11 the mortgagee or mortgage servicer, by mail or by service, either  
12 directly or to any agent of the mortgagee or mortgage servicer,  
13 including at the address of any registered agent:

14 (1) notice that the debtor intends to defer the  
15 foreclosure under this chapter;

16 (2) the name of the debtor and information identifying  
17 the residential real property securing the eligible deferred  
18 foreclosure mortgage loan; and

19 (3) a certification that the residential real property  
20 is the debtor's primary residence and that the debtor intends to  
21 reside at the property at least until the end of the foreclosure  
22 deferment period.

23 Sec. 51A.055. FORECLOSURE DEFERMENT PERIOD. (a) The  
24 foreclosure deferment period under this chapter begins on the date  
25 a debtor provides a mortgagee or mortgage servicer with the notice  
26 required by Section 51A.054.

27 (b) The foreclosure deferment period ends on the earlier of:

1           (1) the 271st day after the date on which the deferment  
2 period begins;

3           (2) the 30th day after any due date of a deferment  
4 payment in accordance with Section 51A.056, if the deferment  
5 payment is not paid;

6           (3) the date on which the mortgagee or mortgage  
7 servicer enters into a qualified loan modification or workout plan  
8 with the debtor under Section 51A.058; or

9           (4) the date on which the foreclosure deferment is  
10 terminated by judicial order.

11           Sec. 51A.056. DEFERMENT PAYMENT. (a) During the  
12 foreclosure deferment period, a debtor must continue to make  
13 monthly payments on the mortgage in accordance with this section.

14           (b) The deferment payment amount for a subprime mortgage is  
15 the lesser of:

16           (1) the minimum monthly payment of principal and  
17 interest on the date the mortgage was originated; or

18           (2) a monthly payment amount based on the outstanding  
19 loan principal plus a rate of interest calculated at a fixed annual  
20 percentage rate, in an amount equal to the most recent conventional  
21 mortgage rate plus a 100 basis point premium for risk, amortized  
22 over a period of 30 years minus the period of time since the  
23 origination of the loan.

24           (c) The deferment payment amount for a negative  
25 amortization mortgage is the amount of the first minimum monthly  
26 payment due under the mortgage.

27           (d) The difference between the amount of a monthly payment

1 due under the terms of any eligible deferred foreclosure mortgage  
2 and the deferment payment amount must be amortized over the life of  
3 the mortgage beginning immediately after the foreclosure deferment  
4 period ends.

5 (e) A mortgagee or mortgage servicer may not impose a late  
6 fee or another fee or charge during the foreclosure deferment  
7 period with respect to any eligible deferred foreclosure mortgage  
8 for which a debtor has initiated foreclosure deferment.

9 Sec. 51A.057. MONTHLY PAYMENT NOTICES. Each periodic  
10 statement of account submitted by a mortgagee or mortgage servicer  
11 relating to an eligible deferred foreclosure mortgage during the  
12 foreclosure deferment period must include:

13 (1) the due date and amount of the next payment due on  
14 the mortgage;

15 (2) the address and delivery method for the next  
16 payment;

17 (3) the date on which the foreclosure deferment will  
18 terminate; and

19 (4) a notification to the debtor that the failure to  
20 make the payment in a timely manner will jeopardize the  
21 continuation of the foreclosure deferment.

22 Sec. 51A.058. QUALIFIED LOAN MODIFICATION OR WORKOUT PLAN.

23 (a) In order to qualify under this chapter and end the foreclosure  
24 deferment period, a loan modification or workout plan under this  
25 chapter must:

26 (1) be scheduled to remain in place until the debtor  
27 sells or refinances the residential real property; and

1           (2) be reasonably affordable to a debtor over the life  
2 of the loan.

3           (b) A loan modification or workout plan is not qualified  
4 under this chapter and does not end the foreclosure deferment  
5 period if the modification or plan:

6           (1) provides a repayment schedule that results in  
7 negative amortization at any time;

8           (2) includes a balloon payment; or

9           (3) requires the debtor to pay additional points and  
10 fees.

11           [Sections 51A.059-51A.100 reserved for expansion]

12           SUBCHAPTER C. OTHER RIGHTS AND RESTRICTIONS

13           Sec. 51A.101. NOTICE OF RESET AND ALTERNATIVES. During the  
14 one-month period that ends 120 days before the date on which, in the  
15 case of a subprime mortgage, the interest rate in effect during the  
16 introductory period of the mortgage adjusts or resets to a variable  
17 interest rate or, in the case of a negative amortization mortgage,  
18 the minimum monthly payment of principal and interest required  
19 first increases from the amount of the first minimum monthly  
20 payment due under the mortgage, the mortgagee or mortgage servicer  
21 shall provide a written notice, separate and distinct from all  
22 other correspondence to the debtor, that includes:

23           (1) in the case of a subprime mortgage, the index or  
24 formula used in determining the annual percentage rate applicable  
25 as of the effective date of the reset or adjustment;

26           (2) in the case of a negative amortization mortgage,  
27 the index or formula used in making increases in the minimum monthly



1 payments due and a source of information about the index or formula;  
2 (3) in the case of a subprime or negative amortization  
3 mortgage:

4 (A) a good faith estimate, based on accepted  
5 industry standards and disclosed in a clear and conspicuous manner,  
6 of the amount of the monthly payment that will apply after the date  
7 of the adjustment, reset, or increase, as applicable, and the  
8 assumptions on which this estimate is based;

9 (B) a list of alternatives a debtor may pursue  
10 before the date of the adjustment, reset, or increase, as  
11 applicable, and descriptions of the actions a debtor must take to  
12 pursue these alternatives, including:

13 (i) refinancing;  
14 (ii) renegotiation of loan terms;  
15 (iii) payment forbearances;  
16 (iv) pre-foreclosure sales; and  
17 (v) any payment assistance available in the  
18 area in which the property is located; and

19 (C) the names, addresses, telephone numbers, and  
20 Internet website addresses of counseling agencies or programs  
21 reasonably available to the debtor that have been certified or  
22 approved and made publicly available by the finance commission; and

23 (4) the address, telephone number, and Internet  
24 website address for the Office of Consumer Credit Commissioner.

25 Sec. 51A.102. DUTY TO MAINTAIN PROPERTY. (a) A debtor who  
26 has received a foreclosure deferment under this chapter may not  
27 destroy, damage, impair, allow to deteriorate, or commit waste on

1 the residential real property securing the mortgage loan on which  
2 the debtor receives the deferment.

3 (b) A person who violates Subsection (a) is liable to the  
4 mortgagee or mortgage servicer for the damage to the residential  
5 real property.

6 Sec 51A.103. DECLARATION OF RIGHTS. At any time during the  
7 foreclosure deferment period, any party to a mortgage may apply to a  
8 court for an order establishing the rights, duties, and conditions  
9 imposed on or applicable to the parties to the mortgage, including  
10 the terms and conditions of a deferment under this chapter.

11 SECTION 2. Not later than November 1, 2009, the Finance  
12 Commission of Texas shall prescribe the form and content of the  
13 notice required by Section 51A.053, Property Code, as added by this  
14 Act.

15 SECTION 3. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2009.