

By: Ellis

S.B. No. 1508

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the right of certain debtors to elect to mediate a  
3 dispute before the debt is accelerated or a contract lien on real  
4 property is foreclosed; 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-ACCELERATION AND PRE-FORECLOSURE  
9 REQUIREMENTS FOR CERTAIN MORTGAGE SERVICERS: MEDIATION. (a) This  
10 section applies to a contract lien on residential real property  
11 occupied by an owner of the property if the mortgagee is a financial  
12 institution that requested and received funds from the federal  
13 government as provided by the Emergency Economic Stabilization Act  
14 of 2008 (Pub. 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 that is subject to the lien for a foreclosure sale  
18 under Section 51.002 unless the mortgage servicer, not earlier than  
19 the 90th day before the date on which the debt is accelerated or the  
20 property is posted for foreclosure or later than the 60th day before  
21 that date, sends a notice to the debtor, in the form prescribed  
22 under Subsection (h), by regular mail and by certified mail, return  
23 receipt requested, that states in 14-point or larger type that the  
24 debtor has the right 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 residential real property for a  
19 foreclosure sale on or after the effective date of this Act. The  
20 acceleration of repayment of a debt or the posting of residential  
21 real property for a foreclosure sale before the effective date of  
22 this Act is governed by the law in effect immediately before the  
23 effective date of this Act, and that law is continued in effect for  
24 that purpose.

25 SECTION 3. This Act takes effect September 1, 2011.