

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 878

An Act to amend the Code of Virginia by adding a section numbered 55-59.1:1, relating to notice and additional time before acceleration of high-risk mortgage loans.

[S 797]

Approved April 23, 2008

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 55-59.1:1 as follows:

§ 55-59.1:1. Notice required for high-risk mortgage loans; additional time before acceleration of loan balance.

A. As used in this section:

"High-risk mortgage loan" means a loan made by a mortgage lender that is secured by a first lien deed of trust or mortgage encumbering residential real property owned and occupied as the primary dwelling unit of the owner that (i) is not subject to the jurisdiction of an active bankruptcy proceeding; (ii) is not in active foreclosure with sale scheduled to occur in less than 30 days; and (iii) either (a) has an annual percentage rate, in effect as of the date of origination, that exceeds the yield on United States Treasury securities having comparable periods of maturity by five percentage points or more or (b) had total points and fees payable on the loan at or before loan closing of greater than seven percent of the total loan amount as shown on the borrower's note or debt instrument. For purposes of determining the yield on United States Treasury securities, the yield used shall be the yield in effect on the date the loan was originated. If no yield was in effect for the applicable maturity on that date, the yield for the next closest maturity shall be used. If the loan's maturity is exactly halfway between security maturities, the maturity having a lower yield shall be used. For purposes of this subsection, "points and fees" shall have the same meaning as set forth in § 103(aa)(4) of the Truth in Lending Act (15 U.S.C. § 1602(aa)(4)).

"Mortgage lender" means any person making four or more mortgage loans in any period of 12 consecutive months.

B. At least 10 business days before a mortgage lender or servicer of a high-risk mortgage loan, or their respective agents or representatives, sends a notice of acceleration of the balance due on a high-risk mortgage loan following the borrower's default resulting from the failure to make any payment required under the loan agreement, it shall provide written notice to the borrower and any other person liable for repayment of such loan. Such written notice shall specify:

- 1. An itemization of all past due amounts causing the loan to be in default;*
- 2. Any other charges that must be paid in order to bring the loan current;*
- 3. That there may be options available to avoid foreclosure, and that the borrower may discuss such options with the mortgage lender or servicer or a counseling agency approved by the United States Department of Housing and Urban Development (HUD);*

- 4. The address and telephone number of the mortgage lender or servicer or its agent that will attempt to work with the borrower to avoid foreclosure;*

- 5. The name, address, and telephone number of three or more HUD-approved counseling agencies operating within the Commonwealth;*

- 6. The date by which the borrower shall reply to the notice;*

- 7. That if the borrower contacts the mortgage lender or servicer on or before the date specified in the notice, using the telephone number specified in the notice, to request additional time to pursue options to avoid foreclosure, the mortgage lender or servicer shall provide the borrower at least 30 additional calendar days from the date of such telephone contact before sending the borrower a notice of acceleration;*

- 8. That if the borrower contacts the mortgage lender or servicer to request additional time to pursue options to avoid foreclosure, the borrower shall (i) make a good faith effort to work actively with the HUD-approved counselor, mortgage lender or servicer on ways to repay amounts due under the loan and avoid foreclosure and (ii) provide his monthly income and expenses to the HUD-approved counselor, mortgage lender or servicer and that examples of income include current or expected monthly income such as employment income, benefit statements from social security, disability unemployment, retirement, or public assistance and that examples of expenses include any second mortgage or other loan payments, property taxes and insurance, total automobile payments, monthly utility payments, and monthly food and household expenses; and*

- 9. That if the borrower fails to contact the mortgage lender or servicer by the date specified in the notice, the mortgage lender or servicer may, at its option, send a notice of acceleration and require immediate repayment of all sums owed under the loan agreement.*

C. The notice described in subsection B shall be sent by first class mail to the last known address, as reflected in the records of the mortgage lender or servicer, of the borrower, and to any other person liable for repayment of the loan, at least 10 business days prior to the sending of any notice of acceleration.

D. A mortgage lender or servicer that is contacted by a borrower pursuant to subdivision B 7 shall not send any notice of acceleration or other demand letter to the borrower or any other person liable for repayment of the loan within 30 calendar days following the date the mortgage lender or servicer was so contacted.

E. Failure of a mortgage lender or servicer to issue the 10-day written notice or to provide the 30-day extension in accordance with this section, prior to issuing a notice of acceleration, shall not affect the validity of any sale under the deed of trust; nor shall the inadvertent failure to comply with any such requirement impose any liability on the mortgage lender or servicer.

F. The Secretary of Commerce and Trade shall maintain a listing of HUD-approved counseling agencies operating within the Commonwealth.

G. A mortgage lender or servicer shall not be required to provide more than one 30-day extension pursuant to subdivision B 7 to a borrower in connection with the same loan.

2. That the provisions of this section shall expire on July 1, 2010.