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SENATE BILL NO. 797

Offered February 25, 2008

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

Patron—Puckett

Introduced at the request of Governor

Referred to Committee on Commerce and Labor

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 foreclosure.

A. As used in this section, "high-risk mortgage loan" means a mortgage loan secured by a first lien on residential real property owned and occupied as the primary dwelling unit of the owner as of the date the loan was originated and is not: (i) in active bankruptcy or (ii) in active foreclosure with sale scheduled to occur in less than 30 days and that has: (1) an interest rate, in effect as of the date of default, that exceeds the yield on United States Treasury securities having comparable periods of maturity by five percentage points or more as of the date of default under the terms of such loan, or (2) 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. If the loan's maturity is exactly halfway between security maturities, the interest rate on the loan will be compared with the yield for Treasury securities having a lower yield. 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)).

B. At least 10 business days before a mortgage lender or servicer of a high-risk mortgage loan, or their respective agents or representatives, may send notice of acceleration of repayment of a loan following a breach of any covenant or agreement 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;
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;
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 phone number specified 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 call before sending the borrower a notice of acceleration; and
8. 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 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 less than 30 calendar days from the date the mortgage lender or servicer was contacted.

E. Failure of a mortgage lender or servicer to issue the 10-day written notice or to provide the additional 30 days' forbearance 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 provisions of this section shall expire on July 1, 2010.

INTRODUCED

SB797