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HOUSE BILL NO. 822

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend the Code of Virginia by adding a section numbered 55-59.1:2, relating to mortgage modification; application; limitations on foreclosure.

Patron—Marshall, R.G.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 55-59.1:2 as follows:

§ 55-59.1:2. Mortgage modification; application; limitations on foreclosure.

A. At least 10 business days before a mortgage lender or mortgage servicer, or its authorized agent or representative, accelerates the balance due and initiates any foreclosure on residential real property that serves as the primary residence of the borrower under the terms of any loan secured by a deed of trust or mortgage on such property, the mortgage lender or mortgage servicer shall send a written notice of its intent to initiate such foreclosure to the borrower. The notice shall include (i) a statement that the mortgage lender or mortgage servicer intends to accelerate the balance due under the loan and initiate foreclosure upon the property due to the borrower's default on the loan, (ii) information regarding the borrower's eligibility for any loan modification program offered by the mortgage lender or mortgage servicer or by a government agency if the mortgage lender or servicer participates in the government agency's program, and (iii) information on how to apply to such loan modification program, including the address and telephone number of the mortgage lender or mortgage servicer, or its authorized agent or representative. The notice required by this subsection shall be sent by first-class mail to the address of the property or, if different, to the last known address of the borrower as reflected in the records of the mortgage lender or servicer.

B. Upon receipt of a substantially completed application for modification from a borrower, the mortgage lender or mortgage servicer shall send written notice to the borrower that the application has been received. The notice required by this subsection shall be sent by first-class mail to the borrower's address contained in the application.

C. After receipt of a substantially completed application from a borrower for modification of the terms of any loan secured by a deed of trust or mortgage on residential real property that serves as the primary residence of the borrower, a mortgage lender or mortgage servicer that is the holder of the obligation secured by a deed of trust or mortgage shall notify the borrower of its decision to accept or deny the application within 30 days. The mortgage lender or mortgage servicer shall review each application received from a borrower in good faith and the decision of the mortgage lender or mortgage servicer to accept or deny an application shall be based on the general business practices of the mortgage lender or mortgage servicer. If the mortgage lender or mortgage servicer denies the application, it shall notify the borrower in writing of the denial and such notification shall include a statement explaining the reasons for the denial. A mortgage lender or mortgage servicer shall not deny a borrower's application solely on the basis that the application is deficient for failing to include all information or documentation necessary for the mortgage lender or mortgage servicer to render a decision on the application without first notifying the borrower in writing of the deficiency and giving him a reasonable period of time to correct the deficiency. A mortgage lender or mortgage servicer may deny a borrower's application if the borrower unreasonably delays the review of such application by failing to provide information or documentation necessary to complete the review of the application or by refusing to provide such information. The mortgage lender or mortgage servicer shall send all written notifications required by this subsection by first-class mail to the borrower's address contained in the application.

D. After receipt of an application for modification, a mortgage lender or mortgage servicer shall not initiate any foreclosure upon the property described in subsection A (i) until such time as the mortgage lender or mortgage servicer denies the application and sends written notification of such denial to the borrower pursuant to subsection A or (ii) if the mortgage lender or mortgage servicer has accepted the borrower's application, during the period of the modification unless the borrower is in default of the terms of the modification.

E. A return receipt or other receipt showing delivery of the notice to the addressee or written evidence that such notice was delivered by the U.S. postal service or other commercial delivery service to but not accepted by the addressee shall be prima facie evidence of receipt of such notice.

INTRODUCED

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59 *F. The provisions of this section shall not apply to any mortgage lender or mortgage servicer who*
60 *does not provide for loan modifications or if any applicable pooling and servicing agreement prohibits*
61 *any modification.*