

12104082D

SENATE BILL NO. 644

Offered January 20, 2012

A *BILL to amend the Code of Virginia by adding a section numbered 36-139.5:2, relating to the establishment within the Department of Housing and Community Development of a foreclosure counseling pilot program.*

Patrons—Colgan, Barker and Puller

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 36-139.5:2 as follows:

§ 36-139.5:2. Additional powers and duties of director; foreclosure counseling pilot program.

A. As used in this section, unless the context requires otherwise:

"Critical locality" means the cities of Manassas and Manassas Park and the County of Prince William.

"Director" means the Director of the Department of Housing and Community Development.

"Dispute resolution" means a facilitated negotiation between a homeowner and mortgagee for the purpose of reaching an agreement for mortgage loan modification or other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is unavoidable.

"Foreclosure counseling" includes (i) providing a homeowner with information and assistance regarding avoiding foreclosure; (ii) representing a homeowner in negotiations and discussions with the homeowner's mortgagee or mortgage loan servicer, including dispute resolution; (iii) assisting a homeowner in obtaining a modification or refinancing of a mortgage loan; and (iv) conducting other activities on behalf of a homeowner that have the purpose of avoiding a foreclosure of a mortgage loan encumbering the homeowner's residence.

"Homeowner" means an individual, including an individual and the individual's spouse, who at the time that a notice of default and intention to foreclose is served on him under the power of sale in a deed of trust or mortgage instrument (i) owns an interest in the residential property, and the interest is encumbered by the mortgage being foreclosed; and (ii) for whom the residential property is and has been the person's primary residence for a continuous period of not less than 180 days immediately preceding the date on which the notice is served.

"Mortgage loan" means a deed of trust or mortgage securing funds used to purchase, or refinance the purchase, of a single-family residence located in a critical locality, on which loan the homeowner is in default or is in imminent risk of defaulting.

"Mortgage loan servicer" means an entity that administers or at any point administered a mortgage loan; however, such administration shall include, but not be limited to, calculating principal and interest, collecting payments from the mortgagor, acting as escrow agent, or foreclosing in the event of a default.

"Qualified staff" means employees of the Department of Housing and Community Development who are certified to provide foreclosure prevention counseling services by the U.S. Department of Housing and Urban Development, the Virginia Housing Development Authority, or other government agency approved by the Director.

B. The Director shall establish a pilot program of providing foreclosure counseling to homeowners in critical localities. Under this program, qualified staff shall:

1. Conduct workshops and other outreach programs directed at educating the public in critical localities regarding resources to avoid foreclosure;

2. Provide homeowners an opportunity to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable; and

3. Upon request represent homeowners in dispute resolution and other foreclosure counseling activities.

C. Qualified staff shall provide foreclosure counseling without charge to homeowners participating in the pilot program.

D. Personal financial information and other sensitive personal information, including information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, which is disclosed to qualified staff in the course of foreclosure counseling shall be confidential and not subject to public disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.).

E. Participation in foreclosure counseling through the program established under this section shall

INTRODUCED

SB644

59 *be optional, and neither the homeowner nor the mortgagee shall be prejudiced as a result of failing or*
60 *refusing to participate in foreclosure counseling.*

61 *F. The Department shall provide the Governor and General Assembly with annual reports regarding*
62 *the results of the pilot program and its effectiveness. Reports shall also identify legal or other*
63 *impediments to foreclosure counseling efforts.*

64 **2. That the provisions of this act shall expire on July 1, 2017.**