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**HOUSE BILL NO. 1665**

Offered January 12, 2011

Prefiled January 10, 2011

A *BILL to amend the Code of Virginia by adding a section numbered 55-59.1:2, relating to deed of trust foreclosure procedures; notices; duties of beneficiary; right to reinstate certain loans upon curing default.*

Patrons—Alexander and Dance

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. *Additional requirements applicable to foreclosure under deed of trust.*

A. *Within two business days after a beneficiary of a first priority deed of trust securing a loan on residential real property that is the primary residence of the grantor of the deed of trust characterizes the loan as being in default, accelerates the balance due on the loan, or otherwise institutes collection proceedings on the loan, as a result of the grantor's failure to make any payment due on the loan, the beneficiary or its agent shall send written notice to the grantor, by first-class mail sent to the address of the property, informing the grantor (i) that the beneficiary has taken such action with respect to the loan as a result of the failure to make such payment; (ii) of any programs or options that the beneficiary provides, conducts, or has knowledge of, including programs provided by governmental agencies, that may permit the grantor to avoid foreclosure of the deed of trust, including conditions under which the beneficiary may be willing to renegotiate the terms of the loan or permit the short sale of the real estate; and (iii) of a telephone number or Internet address through which the grantor may find contact information for counseling agencies operating within the Commonwealth that have been approved by the U.S. Department of Housing and Urban Development.*

B. *At no time after the beneficiary of a deed of trust described in subsection A has characterized the loan as being in default, accelerated the balance due on the loan, or otherwise instituted collection proceedings on the loan shall the beneficiary unreasonably refuse (i) to provide to the grantor information regarding the status of the loan, including information regarding any sums that the payment of which would cure any default under the loan, or (ii) to reply to inquiries from the grantor regarding the status of the loan or programs or options that the beneficiary provides, conducts, or has knowledge of that may permit the grantor to avoid foreclosure of the deed of trust. The notice requirements of this subsection are in addition to, and not in lieu of, any other notices required to be given to a grantor pursuant to other provisions of this title.*

C. *Notwithstanding the provisions of any other law to the contrary:*

1. *The grantor, or anyone authorized to act on the grantor's behalf, under any first priority deed of trust securing a loan on residential real property that is the primary residence of the grantor for which a notice is required to be given pursuant to subsection A, whether or not such required notice was in fact given, shall have the right, at any time, up to the date of the sale of the property under this chapter by the trustee under the deed of trust, to cure the default, de-accelerate, and reinstate the loan by performing all of the requirements specified in subdivision 2. The grantor may exercise the right to cure a default as to a particular loan and reinstate that mortgage only once every 18 months, which period shall run from the date of cure and reinstatement.*

2. *To cure a default and reinstate a loan as described in subdivision 1, a grantor shall:*

a. *Pay or tender to the beneficiary of the deed of trust, in the form of cash, cashier's check, or certified check, all sums that would have been due in the absence of default, at the time of payment or tender;*

b. *Perform any other obligation that the grantor would have been bound to perform in the absence of the default or the exercise of an acceleration clause, if any;*

c. *Pay or tender attorney fees lawfully incurred by the trustee and beneficiary in connection with loan default; and*

d. *Pay all contractual late charges, as provided for in the loan documents.*

3. *To cure a default under this section, a grantor shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this subsection.*

4. *Cure of a default reinstates the grantor to the same position as if the default had not occurred and shall nullify, as of the date of cure, any acceleration of any obligation under the loan, note, or deed of trust arising from the default.*

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59       5. *The right to cure a default under this subsection is independent of any right of redemption or any*  
60 *other right or remedy under the common law, principles of equity, state or federal statute, or rule of*  
61 *court.*

62       D. *The requirements of this section shall apply only to mortgage lenders subject to the requirements*  
63 *of Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 and to any person described in subdivisions 2, 3, 7, or 10*  
64 *of § 6.1-411.*