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Griffith, Lambert, Osienski, Phillips

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 245

AN ACT TO AMEND TITLES 10 AND 29 OF THE DELAWARE CODE RELATING TO RESIDENTIAL MORTGAGE FORECLOSURE AND THE OFFICE OF FORECLOSURE PREVENTION AND FINANCIAL EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 2518, Title 29 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 2518. Office of Foreclosure Prevention and Financial Education ~~[Expires Jan. 1, 2025, under the terms of~~
4 ~~subsection (d) of this section].~~ Education.

5 (d) ~~This section expires on January 1, 2025, unless terminated sooner or extended by the General Assembly.~~
6 [Repealed.]

7 Section 2. Amend § 5062A, Title 10 of the Delaware Code by making deletions as shown by strike through and
8 insertions as shown by underline as follows:

9 § 5062A. Loss mitigation affidavit ~~required [Expires Jan. 1, 2025, under the terms of subsection (e) of this~~
10 ~~section].~~ required.

11 (d) This section applies to the following mortgage foreclosure actions:

12 (1) Actions filed on or after ~~January 19, 2012, and before January 1, 2025.~~ January 19, 2012.

13 (2) Actions pending in the Superior Court on January 19, 2012, which have not gone to judgment or sale.

14 (e) ~~This section expires on January 1, 2025, unless terminated sooner or extended by the General Assembly.~~
15 [Repealed.]

16 Section 3. Amend § 5062B, Title 10 of the Delaware Code by making deletions as shown by strike through and
17 insertions as shown by underline as follows:

18 § 5062B. Required notices.

19 (a) (1) Except as provided in paragraph (a)(2) of this section, with respect to an owner-occupied 1- to 4-family
20 primary residential property, a mortgage foreclosure action may not be filed until 45 days after a notice of intent to
21 foreclose is sent in the form and manner required by paragraph (a)(3) of this section, which notice may not be sent until the
22 obligor on the loan secured by the mortgage has defaulted on the obligation set forth in the terms of the loan.

23 (2) The notice of intent to foreclose required under paragraph (a)(1) of this section ~~shall~~ is not be required if
24 the property subject to the mortgage has been abandoned, if the mortgage is held by the seller of the subject property
25 who does not hold more than 5 such mortgages, if the obligor on the loan secured by the mortgage has voluntarily
26 surrendered the property to the obligee, or if the default has continued after the automatic stay has been lifted or
27 terminated in a bankruptcy proceeding, or if the default has continued after the bankruptcy proceeding has been
28 dismissed.

29 (3) a. The notice of intent to foreclose required under paragraph (a)(1) of this section ~~shall~~ must be sent: sent
30 by all of the following methods:

31 1. To ~~the borrower(s)~~ all borrowers by certified mail, postage prepaid, return receipt requested,
32 bearing postmark from the United States Postal ~~Service; and Service.~~

33 2. To ~~the borrower(s)~~ all borrowers by first class mail.

34 b. The notice of intent to foreclose ~~shall:~~ must contain all of the following:

35 1. ~~Contain the~~ The following heading, in English and in Spanish, in at least 30-point boldface type, at
36 the beginning of the notice:

37 “NOTICE REQUIRED BY DELAWARE LAW: TAKE ACTION TO SAVE YOUR HOME FROM
38 FORECLOSURE”

39 2. ~~Contain the following statement,~~ A statement, in English and in Spanish, in at least 14-point
40 boldface type, immediately following the ~~heading:~~ heading, in substantially the following form with such
41 additions and deletions as may be recommended by the administrator of the Residential Mortgage Foreclosure
42 Mediation Program from time to time:

43 “This is an official ~~notice~~ Notice that the mortgage on your home is in default, and the lender
44 intends to foreclose. Specific information about the nature of the default may be provided in the attached
45 pages.

46 Mortgage foreclosure is a complex process. Some people may approach you about ‘saving’ your
47 home. You should be careful about any such promises. The State encourages you to become informed
48 about your options in foreclosure before entering into any agreements with anyone in connection with the

49 foreclosure of your home. There are government agencies and nonprofit organizations that you may
50 contact for helpful information about the foreclosure process. For the name and telephone number of an
51 organization near you, please refer to the list later in this notice, ~~call the Delaware Attorney General's~~
52 ~~Foreclosure Hotline at 1-800-220-5424, or go to www.DEForeclosureHelp.org.~~ Notice. The State does
53 not guarantee the advice of these organizations. Do not delay dealing with the foreclosure because your
54 options may become more limited as time passes.

55 EMERGENCY FINANCIAL HELP MAY BE AVAILABLE

56 The ~~Delaware Emergency Mortgage Assistance Program (DEMAP)~~ Delaware State Housing
57 Authority ("DSHA") may be able to help to save your home. ~~DEMAP is a loan program that provides~~
58 ~~DSHA has loan programs to provide~~ Delaware homeowners with assistance in preventing residential
59 mortgage foreclosures that result from circumstances beyond ~~the homeowner's~~ their control. If you are
60 delinquent on your mortgage, you should meet with ~~an approved DEMAP housing counseling agency a~~
61 U.S. Department of Housing and Urban Development ("HUD") Certified Housing Counselor as soon as
62 ~~possible, possible~~ and explore your options with ~~the counseling agency~~ prior to applying to ~~the DEMAP~~
63 ~~Program.~~ any DSHA programs. To find a ~~counseling agency,~~ HUD Certified Housing Counselor, refer to
64 the list later in this notice, ~~call the Delaware Attorney General's Foreclosure Hotline at 1-800-220-5424,~~
65 ~~or go to www.DEForeclosureHelp.org.~~ Notice. Take this Notice with you when you meet with the
66 ~~counseling agency.~~ HUD Certified Housing Counselor.

67 3. ~~Contain, The following phrase,~~ in English and in Spanish, in at least 14-point boldface type, ~~the~~
68 ~~phrase type:~~

69 ~~“For “For information on how to reinstate your loan, call the following telephone number: .”~~
70 ~~number:”~~

71 and the telephone number of a contact person or department the homeowner may call to obtain
72 specific instructions on how to reinstate the mortgage ~~loan;~~ loan.

73 4. ~~Contain a statement,~~ A statement, as of the date of the notice, of the nature of the default, the
74 amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees,
75 and any other actions the homeowner must take to cure the ~~default;~~ default.

76 5. ~~Contain a~~ A list of ~~approved DEMAP housing counseling agencies~~ HUD Certified Housing
77 Counselors and the their contact ~~information for each listed agency; and information.~~

78 6. The phone number for the Delaware Attorney General's Foreclosure Hotline and the contact
79 information for DSHA's foreclosure prevention programs.

80 ~~6. 7.~~ Any other information that the Superior Court ~~shall~~ may require.

81 (4) If the borrower(s) may be eligible to apply for assistance through any proprietary loss mitigation program
82 offered by the potential plaintiff or under any federal loss mitigation program in which the potential plaintiff
83 participates, including, but not limited to, the Home Affordable Modification Program, the Second Lien Modification
84 Program, the Home Affordable Unemployment Program, and the Home Affordable Foreclosure Alternatives Program,
85 the potential plaintiff shall include a list of the potentially applicable loss mitigation programs, instructions for how to
86 initiate a completed application for each such program, and a telephone number to call to confirm receipt of an
87 application.

88 (5) The potential plaintiff (or the servicer sending notice on their behalf) shall include with the notice of intent
89 to foreclose an accounting of the mortgage obligation covering the 12-month period prior to the date of the alleged
90 default. The accounting ~~shall~~ must include, at a minimum, a history of all payments made during the 12-month period
91 prior to the date of the alleged default and the potential plaintiff's allocation of those payments to principal, interest,
92 attorneys' fees, other applicable fees, and the allocation of such payments to the payment installments required by the
93 mortgage. The accounting ~~shall~~ must also ~~include:~~ include all of the following:

94 a. The due date for the ~~mortgage;~~ mortgage.

95 b. Any other information as the potential plaintiff may be relying upon as the basis for the claim of
96 ~~default;~~ and default.

97 c. A certification by the potential plaintiff (or the servicer sending notice on their behalf) that the
98 information contained in the accounting is true and accurate to the best of its knowledge as of the date provided
99 and that the information provided has been relied upon as the basis for the claim of default. Where a servicer
100 provides the certification instead of the potential plaintiff, the servicer shall also identify itself as such and recite in
101 such certification its authority to act on behalf of the potential plaintiff.

102 (b) As necessary to reflect changes in law, procedure, or loss mitigation options, the Superior Court may prescribe
103 additional or alternate requirements for the form of a notice of intent to foreclose as described under paragraph (a)(3)b. of
104 this section.

105 (c) ~~The Delaware State Housing Authority~~ DSHA shall make available upon request the list of approved ~~DEMAP~~
106 ~~housing counseling agencies~~ HUD Certified Housing Counselors and the contact information for each ~~listed agency as~~
107 required under paragraph (a)(3)b.5. of this section.

108 Section 4. Amend § 5062C, Title 10 of the Delaware Code by making deletions as shown by strike through and
109 insertions as shown by underline as follows:

110 § 5062C. Residential Mortgage Foreclosure Mediation Program ~~[Expires Jan. 1, 2025, under the terms of~~
111 ~~subsection (v) of this section].~~ Program.

112 (u) This section applies to mortgage foreclosure actions commenced on or after ~~January 19, 2012, and before~~
113 ~~January 1, 2025.~~ January 19, 2012.

114 (v) ~~This section expires on January 1, 2025, unless terminated sooner or extended by the General Assembly.~~
115 [Repealed.]

116 Section 4. Amend § 5062D, Title 10 of the Delaware Code by making deletions as shown by strike through and
117 insertions as shown by underline as follows:

118 § 5062D. Complaints and answers ~~[Expires Jan. 1, 2025, under the terms of subsection (e) of this section].~~
119 answers.

120 (d) This section applies to mortgage foreclosure actions commenced on or after ~~January 19, 2012, and before~~
121 ~~January 1, 2025.~~ January 19, 2012.

122 (e) ~~This section expires on January 1, 2025, unless terminated sooner or extended by the General Assembly.~~
123 [Repealed.]

SYNOPSIS

The Office of Foreclosure Prevention and Financial Education and the Residential Mortgage Foreclosure Mediation Program were created in the wake of the 2008 financial crisis to assist homeowners at risk of foreclosure or already navigating the foreclosure process. Originally intended as temporary programs, the need for these programs is as critical as ever for those facing the loss of their homes. The programs have proven to be important resources in preserving home ownership and educating homeowners on their rights and responsibilities in times of economic contraction and in times of economic expansion. As a result of their successes, the General Assembly has extended the programs multiple times. It is clear that the need for these programs will continue for the foreseeable future. In recognition of this reality, this Act removes the expiration dates from the programs.

Senate Substitute No. 1 for Senate Bill No. 245 makes the following substantive changes:

(1) It adds a requirement that the notice of intent to foreclose include the phone number for the Delaware Attorney General's Foreclosure Hotline and the contact information for Delaware State Housing Authority's foreclosure prevention programs.

(2) The required notice of intent to foreclose now directs homeowners to U.S. Housing and Urban Development Department Certified Housing Counselors for assistance.

Like Senate Bill No. 245, Senate Substitute No. 1 for Senate Bill No. 245 also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Huxtable