

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 331

BY BUSINESS COMMITTEE

AN ACT

RELATING TO FORECLOSURE; AMENDING SECTION 45-1506, IDAHO CODE, TO PROVIDE FOR THE MAILING OF CERTAIN NOTICE AND PROCEDURE RELATED THERETO AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 15, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-1506C, IDAHO CODE, TO PROVIDE FOR SUPPLEMENTAL NOTICE AND FOR AN OPPORTUNITY TO REQUEST A LOAN MODIFICATION; AMENDING CHAPTER 6, TITLE 48, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 48-603F, IDAHO CODE, TO PROVIDE FOR LOAN MODIFICATION FEES; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 45-1506, Idaho Code, be, and the same is hereby amended to read as follows:

45-1506. MANNER OF FORECLOSURE -- NOTICE -- SALE. (1) A trust deed may be foreclosed in the manner provided in this section.

(2) Subsequent to recording notice of default as hereinbefore provided, and at least one hundred twenty (120) days before the day fixed by the trustee for the trustee's sale, notice of such sale shall be given by registered or certified mail, return receipt requested, to the last known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed and any person requesting notice of record as provided in section 45-1511, Idaho Code.

(b) Any successor in interest of the grantor ~~(including, but not limited to, a grantee, transferee or lessee)~~, whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.

(c) Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such lien or interest.

(3) The disability, insanity or death of any person to whom notice of sale is to be given under subsection (2) of this section shall not delay or impair in any way the trustee's right under a trust deed to proceed with a sale under such deed, provided the notice of sale required under subsection (2) of this section has been mailed as provided by law for service of summons upon incompetents or to the administrator or executor of the estate of such person.

(4) The notice of sale shall set forth:

(a) The names of the grantor, trustee and beneficiary in the trust deed.

(b) A description of the property covered by the trust deed.

(c) The book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded.

(d) The default for which the foreclosure is made.

1 (e) The sum owing on the obligation secured by the trust deed.

2 (f) The date, time and place of the sale which shall be held at a des-
3 ignated time after 9:00 a.m. and before 4:00 p.m., ~~S~~s~~t~~t~~a~~nd ~~T~~t~~i~~m~~e~~, and
4 at a designated place in the county or one (1) of the counties where the
5 property is located.

6 (5) At least three (3) good faith attempts shall be made on different
7 days over a period of not less than seven (7) days each of which attempts
8 must be made at least thirty (30) days prior to the day of the sale to serve
9 a copy of the notice of sale upon an adult occupant of the real property in
10 the manner in which a summons is served. At the time of each such attempt,
11 a copy of the notice of sale shall be posted in a conspicuous place on the
12 real property unless the copy of the notice of sale previously posted re-
13 mains conspicuously posted. Provided, however, that if during such an at-
14 tempt personal service is made upon an adult occupant and a copy of the notice
15 is posted, then no further attempt at personal service and no further posting
16 shall be required. Provided, further, that if the adult occupant personally
17 served is a person to whom the notice of sale was required to be mailed, ~~and~~
18 ~~was mailed~~, pursuant to the foregoing subsections of this section, then no
19 posting of the notice of sale shall be required.

20 (6) A copy of the notice of sale shall be published in a newspaper of
21 general circulation in each of the counties in which the property is situ-
22 ated once a week for four (4) successive weeks, making four (4) publishings
23 in all, with the last publication to be at least thirty (30) days prior to the
24 day of sale.

25 (7) An affidavit of mailing notice of sale and an affidavit of posting, ~~and~~
26 ~~when required~~, and publication of notice of sale as required by subsection
27 (6) of this section shall be recorded in the mortgage records in the counties
28 in which the property described in the deed is situated at least twenty (20)
29 days prior to the date of sale.

30 (8) The sale shall be held on the date and at the time and place des-
31 ignated in the notice of sale or notice of rescheduled sale as provided in
32 section 45-1506A, Idaho Code, unless the sale is postponed as provided in
33 this subsection or as provided in section 45-1506B, Idaho Code, respecting
34 the effect of an intervening stay or injunctive relief order. The trustee
35 shall sell the property in one (1) parcel or in separate parcels at auction
36 to the highest bidder. Any person, including the beneficiary under the
37 trust deed, may bid at the trustee's sale. The attorney for such trustee
38 may conduct the sale and act in such sale as the auctioneer of trustee. The
39 trustee may postpone the sale of the property upon request of the beneficiary
40 by publicly announcing at the time and place originally fixed for the sale,
41 the postponement to a stated subsequent date and hour. No sale may be post-
42 poned to a date more than thirty (30) days subsequent to the date from which
43 the sale is postponed. A postponed sale may itself be postponed in the same
44 manner and within the same time limitations as provided in this subsection.
45 For any loan made by a state or federally regulated beneficiary, which loan
46 is secured by a deed of trust encumbering the borrower's primary residence,
47 as determined pursuant to section 45-1506C(1), Idaho Code, the trustee,
48 prior to conducting any trustee's sale previously postponed pursuant to
49 this section, shall mail notice of such trustee sale at least fourteen (14)
50 days prior to conducting such sale by the same means and to the same persons

1 as provided in subsection (2) of this section. The trustee or beneficiary
 2 shall, prior to conducting the trustee's sale, record an affidavit of mail-
 3 ing confirming that such notice has been mailed as required by this section.
 4 The filing of such affidavit of mailing is conclusive evidence of compliance
 5 with this section as to any party relying on said affidavit of mailing.

6 (9) The purchaser at the sale shall forthwith pay the price bid and upon
 7 receipt of payment the trustee shall execute and deliver the trustee's deed
 8 to such purchaser, provided that in the event of any refusal to pay purchase
 9 money, the officer making such sale shall have the right to resell or reject
 10 any subsequent bid as provided by law in the case of sales under execution.

11 (10) The trustee's deed shall convey to the purchaser the interest in
 12 the property which the grantor had, or had the power to convey, at the time of
 13 the execution by him of the trust deed together with any interest the grantor
 14 or his successors in interest acquired after the execution of such trust
 15 deed.

16 (11) The purchaser at the trustee's sale shall be entitled to posses-
 17 sion of the property on the tenth day following the sale, and any persons re-
 18 maining in possession thereafter under any interest except one prior to the
 19 deed of trust shall be deemed to be tenants at sufferance.

20 (12) Whenever all or a portion of any obligation secured by a deed of
 21 trust which has become due by reason of a default of any part of that obli-
 22 gation, including taxes, assessments, premiums for insurance or advances
 23 made by a beneficiary in accordance with the terms of the deed of trust,
 24 the grantor or his successor in interest in the trust property or any part
 25 thereof, or any beneficiary under a subordinate deed of trust or any per-
 26 son having a subordinate lien or encumbrance of record thereon, at any time
 27 within one hundred fifteen (115) days of the recording of the notice of
 28 default under such deed of trust, if the power of sale therein is to be exer-
 29 cised, or otherwise at any time prior to the entry of a decree of foreclosure,
 30 may pay to the beneficiary or their successors in interest, respectively,
 31 the entire amount then due under the terms of the deed of trust and the obli-
 32 gation secured thereby, ~~including costs and expenses actually incurred in~~
 33 ~~enforcing the terms of such obligation and a reasonable trustee's fee sub-~~
 34 ~~ject to the limitations imposed by subsection (6) of section 45-1502, Idaho~~
 35 ~~Code, and attorney's fees as may be provided in the promissory note,~~ other
 36 than such portion of the principal as would not then be due had no default
 37 occurred, and thereby cure the default theretofore existing, and thereupon,
 38 all proceedings theretofore had or instituted shall be dismissed or discon-
 39 tinued and the obligation and deed of trust shall be reinstated and shall be
 40 and remain in force and effect, the same as if no acceleration had occurred.

41 (13) Any mailing to persons outside the United States and its territo-
 42 ries required by this chapter may be made by ordinary first class mail if cer-
 43 tified or registered mail service is unavailable.

44 (14) Service by mail in accordance with the provisions of this section
 45 shall be deemed effective at the time of mailing.

46 SECTION 2. That Chapter 15, Title 45, Idaho Code, be, and the same is
 47 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 48 ignated as Section 45-1506C, Idaho Code, and to read as follows:

45-1506C. SUPPLEMENTAL NOTICE -- OPPORTUNITY TO REQUEST LOAN MODIFICATION. (1) In the case of a loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering a borrower's primary residential property for any noncommercial loan, the notice provided in this section shall accompany the notice of default provided to the grantor. The beneficiary or its agent shall determine whether the subject real property is a borrower's primary residence by searching the county assessor's tax rolls prior to recording a notice of default to confirm whether such real property has been granted a homeowner's property tax exemption pursuant to section 63-602G, Idaho Code. Any property for which a homeowner's property tax exemption has been granted for the year in which the notice of default is recorded shall be deemed to be a borrower's primary residential dwelling. If no homeowner's property tax exemption has been granted for the year in which the notice of default is recorded, the provisions of this section shall not apply. The notice, if required, shall be printed in at least 14-point type and substantially conform to the following form:

IMPORTANT NOTICE:
YOU ARE IN DANGER OF LOSING YOUR PROPERTY
IF YOU DO NOT TAKE ACTION IMMEDIATELY

This notice concerns the mortgage loan for your property at (enter the complete address).

You have not fulfilled your contractual obligations under the terms of your mortgage loan. Under Idaho law, the holder of your loan, "the beneficiary," can sell your property to satisfy your obligation.

As of (enter the date), you needed to pay \$(enter the amount owed) to bring your mortgage loan current. That amount may have increased since that date and may include additional costs and fees described in the loan documents.

The beneficiary can provide you with the exact amount that you owe, but you have to ask. Call (enter the toll-free telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to obtain other details about your loan. You also can send a written request for this information by certified mail to: (enter the complete address).

LOAN MODIFICATION ASSISTANCE

If you want to save your home from foreclosure but you cannot afford your current loan payments, you need to contact the beneficiary immediately to ask about any available loss mitigation programs. You may or may not qualify for a loan modification or other alternative to foreclosure.

You may request to meet with the beneficiary to discuss options for modifying your loan.

IF YOU WANT TO APPLY FOR A MODIFICATION OF YOUR LOAN, YOU MUST COMPLETE AND RETURN THE ENCLOSED "MODIFICATION REQUEST FORM" BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE BENEFICIARY MUST RECEIVE THE FORM ON OR BEFORE (enter the date), WHICH IS THIRTY (30) DAYS AFTER THE DATE BELOW.

1 WARNING: You may get offers from people who tell you they can help you keep
2 your property. Never pay someone to help you obtain a loan modification.
3 Help is available for free from housing counselors who are certified through
4 the department of housing and urban development. Visit www.hud.gov for a
5 current list of certified housing counselors in Idaho.

6 DATED: (enter the date)

7 Beneficiary name: (print name)

8 Beneficiary or beneficiary's agent's signature: (sign name)

9 Beneficiary's telephone number: (enter the toll-free telephone number)

10 (2) (a) The notice required under subsection (1) of this section must
11 be accompanied by a form to request a loan modification. The form must
12 include the address to which and state the date by which the grantor must
13 return the form. The form may state that the grantor must disclose cur-
14 rent information about the grantor's income and expenses, the grantor's
15 address, phone number and electronic mail address and other facts that
16 may affect the grantor's eligibility for a loan modification.

17 (b) If the trust deed, or any assignments of the trust deed, is in the
18 Spanish language, the notice required under subsection (1) of this sec-
19 tion and the form identified in paragraph (a) of this subsection shall
20 be in the Spanish language.

21 (3) If a grantor returns the form identified in subsection (2) of this
22 section to the beneficiary by the date specified on the form, the benefi-
23 ciary or the beneficiary's agent shall review the information the grantor
24 provided in the form and shall evaluate the grantor's request. The benefi-
25 ciary or the beneficiary's agent, as soon as reasonably practicable but not
26 later than forty-five (45) days after receiving the form, shall notify the
27 grantor in writing whether the beneficiary approves or denies the request or
28 requires additional information. A trustee's sale for the property subject
29 to the loan may not occur until after the beneficiary or the beneficiary's
30 agent timely responds to the grantor. During the forty-five (45) day period,
31 the beneficiary or the beneficiary's agent may request the grantor to pro-
32 vide additional information required to determine whether the loan can be
33 modified.

34 (4) (a) Except as provided in paragraph (b) of this subsection, if the
35 grantor timely requests a meeting with the beneficiary, the benefi-
36 ciary or the beneficiary's agent shall either meet with the grantor in
37 person or speak to the grantor by telephone before the beneficiary or
38 the beneficiary's agent responds to the grantor's request to modify the
39 loan. If the grantor requests the meeting, the beneficiary or the benefi-
40 ciary's agent shall schedule the meeting by contacting the grantor at
41 the grantor's last known address or telephone number or at the grantor's
42 electronic mail address, if the grantor indicates on the loan modifica-
43 tion form that the beneficiary or the beneficiary's agent can contact
44 the grantor at the electronic mail address.

45 (b) A beneficiary or the beneficiary's agent complies with the pro-
46 visions of paragraph (a) of this subsection even if the beneficiary
47 or the beneficiary's agent does not speak to or meet with the grantor
48 if, within seven (7) business days after the beneficiary or the bene-

15 COMES NOW, being first duly sworn, de-
16 poses and says:

2. Beneficiary or Beneficiary's agent has complied with section 45-1506C, Idaho Code, in by: (a) providing the notice required in section 45-1506C(1), Idaho Code; (b) providing the loan modification request form required in section 45-1506C(2), Idaho Code; (c) evaluating the request for modification and providing a written response to the request as required in section 45-1506C(3), Idaho Code; and (d) scheduling, and if attended by the grantor of the Deed of Trust, attending, in person or by telephone, the meeting required in section 45-1506C(4), Idaho Code.

30 (INSERT NOTARY SUBSCRIPTION FOR STATE IN WHICH AFFIDAVIT IS EXECUTED; IDAHO
31 FORM OF SUBSCRIPTION IS SET OUT BELOW)

35 On this day of (month), 20.., before me,, a
36 Notary Public in and for said state, personally appeared, known
37 or identified to me to be the person whose name is subscribed to the foregoing
38 instrument, and acknowledged to me that such officer or agent executed the
39 same.

40 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
41 seal the day and year in this certificate first above written.

1
 2 Notary Public for Idaho
 3 Residing at
 4 My Commission expires

5 (6) Whenever the attorney general has reason to believe that any per-
 6 son has failed to follow the requirements of this section and that proceed-
 7 ings would be in the public interest, he may bring an action in the name of the
 8 state against such person for enforcement of the provisions of this section
 9 with the same procedure and in the same manner as granted the attorney gen-
 10 eral and district court pursuant to section 48-606(1) (a), (b), (d), (e) and
 11 (f) and subsections (2) through (5), Idaho Code, of the Idaho consumer pro-
 12 tection act, chapter 6, title 48, Idaho Code.

13 (7) All penalties, costs and fees received or recovered by the attorney
 14 general shall be remitted to the consumer protection account and expended
 15 pursuant to section 48-606(5), Idaho Code.

16 SECTION 3. That Chapter 6, Title 48, Idaho Code, be, and the same is
 17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 18 ignated as Section 48-603F, Idaho Code, and to read as follows:

19 48-603F. MORTGAGE LOAN MODIFICATION FEES. (1) For purposes of this
 20 section, unless the context otherwise requires:

21 (a) "Fee" means any item of value including, but not limited to, goods
 22 or services.

23 (b) "Loan modification activities" is defined in section 26-31-201(3),
 24 Idaho Code.

25 (2) Charging or collecting any fee in connection with mortgage loan
 26 modification activities shall constitute a violation of the Idaho consumer
 27 protection act, unless the person charging or collecting such fees is li-
 28 censed pursuant to chapter 20, title 54, Idaho Code, or licensed, exempt or
 29 excluded from licensing pursuant to part 2 or 3, chapter 31, title 26, Idaho
 30 Code.

31 SECTION 4. This act shall be in full force and effect on and after
 32 September 1, 2011.