

1 SENATE BILL 349

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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5 and Martin Hickey
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10 AN ACT

11 RELATED TO MORTGAGES; ENACTING THE CORONAVIRUS DISEASE 2019
12 MORTGAGE RELIEF ACT; PROVIDING DEFINITIONS; PROVIDING A
13 MORATORIUM ON ALL FORECLOSURES DURING THE CORONAVIRUS DISEASE
14 2019 PUBLIC HEALTH EMERGENCY; REQUIRING CERTAIN DISCLOSURES BE
15 MADE TO BORROWERS; REQUIRING CERTAIN LOSS MITIGATION OPTIONS;
16 REQUIRING COMPLIANCE AS A PRECONDITION TO FORECLOSURE;
17 DECLARING AN EMERGENCY.

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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
21 cited as the "Coronavirus Disease 2019 Mortgage Relief Act".

22 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
23 Coronavirus Disease 2019 Mortgage Relief Act:

24 A. "borrower" means a natural person obligated to
25 repay a home loan, including a co-borrower, cosigner or

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1 guarantor, and includes any potential or confirmed successor in
2 interest to the original borrower or mortgagor, as provided by
3 12 C.F.R. 1024.31;

4 B. "coronavirus disease 2019 emergency" means the
5 period of time during the existence of a state of public health
6 emergency, as declared by the governor pursuant to Section
7 12-10A-5, related to the coronavirus disease 2019;

8 C. "division" means the financial institutions
9 division of the regulation and licensing department;

10 D. "federally backed mortgage loan" means a
11 federally related mortgage loan that is owned, guaranteed or
12 insured by a government-sponsored enterprise, the federal
13 housing administration, the United States department of
14 veterans affairs or the United States department of
15 agriculture, and includes a loan that is secured by a first or
16 subordinate lien on residential real property that is designed
17 principally for the occupancy of no more than four families;

18 E. "loss mitigation guideline" means any process
19 established by the owner or investor of a mortgage loan that
20 describes the sequence and content of loss mitigation options
21 that a servicer must follow in reviewing a borrower for
22 alternatives to foreclosure, and includes the guidelines for
23 loss mitigation developed by the government-sponsored
24 enterprise, the federal housing administration, the United
25 States department of veterans affairs or the United States

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1 department of agriculture, as well as guidelines and protocols
2 applicable to private mortgage loans through securitization
3 agreements or other contractual terms;

4 F. "mortgage loan" means any loan primarily for
5 personal, family or household use that is secured by a
6 mortgage, deed of trust or other equivalent consensual security
7 interest on a dwelling or residential real estate upon which is
8 constructed or intended to be constructed a dwelling as so
9 defined; and

10 G. "servicer" means any person or entity who
11 directly services a mortgage loan or who is responsible for
12 interacting with the borrower and regularly managing the loan
13 account, including collecting and crediting periodic loan
14 payments, reviewing borrowers for loss mitigation, managing any
15 escrow account or enforcing the note and security instrument,
16 either as the current owner of the promissory note or as the
17 current owner's authorized agent, and includes a subservicing
18 agent to a master servicer by contract and a servicer of a
19 mortgage loan as provided in the federal Real Estate Settlement
20 Procedures Act.

21 SECTION 3. [NEW MATERIAL] MORATORIUM ON FORECLOSURES
22 DURING CORONAVIRUS DISEASE 2019 EMERGENCY.--

23 A. A stay on all pending and subsequently filed
24 mortgage foreclosure proceedings shall be in effect for the
25 duration of the coronavirus disease 2019 emergency. The stay

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1 on all mortgage foreclosure proceedings shall extend for the
2 later of:

3 (1) one hundred eighty days from the end of
4 the governor's declared state of public health emergency; or

5 (2) one hundred twenty days from the end of a
6 borrower's final mortgage forbearance period.

7 B. For the period of time that the stay, as
8 provided in Subsection A of this section, is in effect:

9 (1) a servicer, owner or beneficiary of a
10 mortgage loan may file, but shall not be permitted proceed to
11 serve, seek judgment upon or otherwise advance any foreclosure
12 action in the courts;

13 (2) for a foreclosure action pending in the
14 courts on or before the effective date of the Coronavirus
15 Disease 2019 Mortgage Relief Act, all proceedings including
16 filing of motions, entry of judgment and the scheduling or
17 conduct of a foreclosure sale shall be stayed;

18 (3) all proceedings in post-foreclosure sale
19 eviction proceedings shall be stayed; and

20 (4) all time periods required by any party to
21 do any act related to a foreclosure proceeding, including a
22 period for redemption, shall be tolled.

23 C. The stay shall take effect immediately and
24 automatically upon the effective date of the Coronavirus
25 Disease 2019 Mortgage Relief Act, without any requirement that

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1 individual borrowers request protection under that act.

2 D. Nothing in this section shall be construed to:

3 (1) stay any proceeding in which the servicer
4 adequately demonstrates, to the satisfaction of the presiding
5 judge, that the property at issue in a proceeding is vacant at
6 the filing of the complaint, at the presentment of judgment by
7 default or stipulation, when making a request for approval of
8 any post-foreclosure sale or when making a request for
9 post-foreclosure sale ancillary writs; and

10 (2) prohibit the enforcement of a real estate
11 contract.

12 SECTION 4. [NEW MATERIAL] LOSS MITIGATION GUIDELINES--
13 DISCLOSURES--FEDERALLY BACKED MORTGAGE LOANS.--

14 A. Within thirty days of the effective date of the
15 Coronavirus Disease 2019 Mortgage Relief Act, a servicer shall
16 send each borrower with a federally backed mortgage loan, for a
17 property that is located within the state of New Mexico, an
18 initial disclosure of the loss mitigation guidelines that apply
19 to that borrower's loan. The disclosure shall include:

20 (1) the identity of and contact information
21 for the government-sponsored enterprise or the federal agency
22 that owns, insures or guarantees the loan;

23 (2) a summary of the forbearance and
24 post-forbearance loss mitigation options that are available for
25 the loan, including references to where the complete loss

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1 mitigation guideline texts can be obtained by the borrower; and

2 (3) information on how to request a loss
3 mitigation option.

4 B. The initial disclosure shall not be required to
5 include eligibility determinations for a specific borrower, but
6 shall describe the programs and options that the servicer
7 currently offers for the borrower's type of loan.

8 C. After the initial disclosure, as required in
9 Subsection A of this section, a servicer shall provide each
10 borrower with the same disclosure at least thirty days prior to
11 the expiration of a forbearance period, at least thirty days
12 prior to the filing of a foreclosure complaint and any time
13 when a borrower requests assistance from the servicer to avoid
14 foreclosure.

15 SECTION 5. [NEW MATERIAL] LOSS MITIGATION GUIDELINES--
16 DISCLOSURES--NON-FEDERALLY BACKED MORTGAGE LOANS.--

17 A. Within thirty days of the effective date of the
18 Coronavirus Disease 2019 Mortgage Relief Act, a servicer shall
19 send to each borrower with a residential mortgage, for a
20 property that is located within the state and that is not a
21 federally backed mortgage loan, a disclosure of the loss
22 mitigation guidelines that apply to that borrower's loan. The
23 disclosure shall include:

24 (1) the identity of and contact information
25 for any entity that owns, insures or guarantees the loan;

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1 (2) a summary of the forbearance and
2 post-forbearance loss mitigation options that are available for
3 the loan, including references to where the complete loss
4 mitigation guideline texts can be obtained by the borrower; and

5 (3) information on how to request a loss
6 mitigation option from any entity identified in the disclosure.

7 B. After the disclosure as required in Subsection A
8 of this section, a servicer shall provide each borrower with a
9 further disclosure addressing the same matters provided in
10 Subsection A of this section at least thirty days prior to the
11 expiration of a forbearance period, at least thirty days prior
12 to the filing of a foreclosure complaint and any time when a
13 borrower requests assistance from the servicer to avoid
14 foreclosure.

15 C. No later than thirty days after the end of the
16 governor's declared state of public health emergency related to
17 coronavirus disease 2019 and again, no later than forty-five
18 days before filing a complaint to foreclose, a servicer shall
19 transmit a complete application for any loss mitigation option
20 available to a borrower and confirm receipt of the same by the
21 borrower.

22 D. Unless investor guidelines or other legal
23 requirements prohibit a servicer from compliance with this
24 section, a servicer shall disclose all loss mitigation options
25 potentially available to the borrower and whether investor

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1 guidelines or other legal requirements prohibit the servicer
2 from offering such options to a particular borrower, and the
3 servicer shall provide, with specificity and in full, the
4 source of those guidelines or legal restrictions to the
5 borrower at the time of making the disclosure. In providing
6 the disclosure pursuant to this section, the forbearance and
7 post-forbearance loss mitigation options required to be
8 disclosed and provided by the servicer shall be identical to
9 forbearance and post-forbearance loss mitigation options
10 available at that time for similar loans owned or guaranteed by
11 government-sponsored enterprises.

12 E. In no event shall a servicer be entitled to
13 recover from a borrower any cost incurred by the servicer in
14 complying with the Coronavirus Disease 2019 Mortgage Relief
15 Act.

16 SECTION 6. [NEW MATERIAL] COMPLIANCE--PRECONDITION TO
17 FORECLOSURE.--

18 A. A servicer shall specify within and attach to a
19 foreclosure complaint sufficient evidence that the disclosures
20 required by the Coronavirus Disease 2019 Mortgage Relief Act
21 were provided to the borrower.

22 B. It is unlawful for a servicer to file a
23 foreclosure complaint, enter judgment of foreclosure or conduct
24 a foreclosure sale unless the servicer has:

25 (1) provided the borrower with the proper and

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1 timely disclosures as required by the Coronavirus Disease 2019
2 Mortgage Relief Act; and

3 (2) considered the borrower for forbearance
4 and post-forbearance loss mitigation options, and if rejected,
5 provided specific reasons to the borrower for that rejection
6 and an explanation of any appeal rights available to the
7 borrower regarding any determination made regarding a loss
8 mitigation application.

9 SECTION 7. [NEW MATERIAL] FAILURE TO COMPLY.--

10 A. Failure to comply with the provisions of the
11 Coronavirus Disease 2019 Mortgage Relief Act:

12 (1) may be used as a defense by a borrower in
13 a foreclosure action; and

14 (2) shall constitute an unfair or deceptive
15 trade practice and shall be subject to the penalties and
16 remedies set forth in the Unfair Practices Act.

17 B. In all claims involving a violation of the
18 Coronavirus Disease 2019 Mortgage Relief Act, the servicer or
19 party seeking a foreclosure shall be the party required to
20 prove compliance with the provisions of that act.

21 C. A borrower prevailing in any proceeding to
22 enforce the provisions of the Coronavirus Disease 2019 Mortgage
23 Relief Act shall be entitled to compensatory damages, punitive
24 damages, costs and reasonable attorney fees.

25 SECTION 8. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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