

HOUSE BILL 1172

By Dixie

AN ACT to amend Tennessee Code Annotated, Title 45
and Title 47, relative to homeowners.

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

SECTION 1. This act is known and may be cited as the "Homeowner Bill of Rights."

SECTION 2. Tennessee Code Annotated, Title 45, is amended by adding the following
as a new chapter:

45-21-101. Chapter definitions.

As used in this chapter:

(1) "Borrower":

(A) Means a natural person who is a mortgagor or grantor of a
deed of trust under a residential mortgage loan; and

(B) Does not include a natural person who:

(i) Has surrendered the secured property as evidenced by
a letter confirming the surrender or the delivery of the keys to the
property to the mortgagee, trustee, beneficiary of the deed of trust,
or an authorized agent of such a person; or

(ii) Has filed a case under 11 U.S.C. Chapter 7, 11, 12, or
13 and the bankruptcy court has not entered an order closing or
dismissing the bankruptcy case, or granting relief from a stay of
foreclosure or trustee's sale;

(2) "First lien" means the most senior mortgage or deed of trust on the
property that is the subject of the notice of default or notice of sale;

(3) "Foreclosure prevention alternative" means a first lien loan modification or another available loss mitigation option;

(4) "Lender" means a financial institution that makes, originates, sells, or services mortgages, in exchange for principal and interest, and includes the secured creditors named in the debt obligation and document creating the mortgage;

(5) "Mortgage servicer":

(A) Means:

(i) A person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis, including collecting and crediting periodic loan payments, managing an escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner's authorized agent; and

(ii) A subservicing agent to a master servicer by contract;

and

(B) Does not include a trustee, or a trustee's authorized agent, acting under a power of sale pursuant to a deed of trust;

(6) "Owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes;

(7) "Residential foreclosure sale" or "foreclosure sale" means the exercise of the trustee's power of sale or a sale directed by a court of a single-family residence;

(8) "Residential mortgage loan" means a loan which is primarily for personal, family, or household use and which is secured by a mortgage or deed of trust on owner-occupied housing;

(9) "Single-family residence" means a structure that consists of not more than four (4) units and does not include vacant land, a timeshare, or other regulated property; and

(10) "Trustee" means the person designated as the trustee in the deed of trust or appointed by the court.

45-21-102. Pre-foreclosure notice – Recording notice of default.

For a residential foreclosure sale, the lender or mortgage servicer shall mail, by first-class mail, a notice addressed to the borrower at the borrower's primary address as indicated in the records of the lender or mortgage servicer at least thirty (30) calendar days before recording a notice of default and election to sell or commencing a civil action and at least thirty (30) calendar days after the borrower's default. The notice must contain:

(1) A summary of the borrower's rights, including the borrower's right to:

(A) Remain in the borrower's home until the borrower receives a court order to vacate the property; and

(B) Seek legal counsel or other assistance as provided in subdivision (3)(J);

(2) A statement of civil relief for servicemembers, noting that if the borrower is a servicemember or a dependent of a servicemember, the borrower may be entitled to certain protections under the federal Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.), regarding the servicemember's interest rate and risk of foreclosure, and counseling for covered servicemembers that is

available from Military OneSource and the United States Armed Forces Legal Assistance or another similar agency;

(3) A summary of the borrower's account which sets forth:

(A) The total amount of payment necessary to cure the default and reinstate the residential mortgage loan or to bring the residential mortgage loan into current status;

(B) The amount of the principal obligation under the residential mortgage loan;

(C) The date through which the borrower's obligation under the residential mortgage loan is paid;

(D) The date of the last payment by the borrower;

(E) The current interest rate in effect for the residential mortgage loan, if the rate is effective for at least thirty (30) calendar days;

(F) The date on which the interest rate for the residential mortgage loan may next reset or adjust, unless the rate changes more frequently than once every thirty (30) calendar days;

(G) The amount of the prepayment fee charged under the residential mortgage loan, if any;

(H) A description of any late payment fee charged under the residential mortgage loan;

(I) A telephone number or electronic mail address that the borrower may use to obtain information concerning the residential mortgage loan; and

(J) The names, addresses, telephone numbers, and internet website addresses of three (3) or more legal aid housing programs and

housing assistance or counseling programs approved by the United States department of housing and urban development;

(4) A statement of the facts establishing the right of the lender or mortgage servicer to cause the trustee to exercise the trustee's power of sale or to commence a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan;

(5) For notices of default, a statement that a failure to cure the alleged default within thirty (30) days of the date of mailing the notice may result in the property described in the notice being subject to foreclosure action at a date no less than ninety (90) days in the future;

(6) Unless a borrower has exhausted the process described in § 45-21-104, a statement of the foreclosure prevention alternatives offered by, or through, the lender or mortgage servicer, sent to the borrower not later than five (5) business days after a notice of default and election to sell is recorded, or a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan is commenced. The written statement must include:

(A) That the borrower may be evaluated for a foreclosure prevention alternative or, if applicable, foreclosure prevention alternatives;

(B) Whether a complete application is required to be submitted by the borrower if the borrower wants to be considered for a foreclosure prevention alternative; and

(C) The means and process by which a borrower may obtain an application for a foreclosure prevention alternative; and

(7) A statement that the borrower may request:

(A) A copy of the borrower's promissory note or other evidence of indebtedness;

(B) A copy of the borrower's mortgage or deed of trust; and

(C) A copy of the borrower's payment history since the borrower was last less than sixty (60) calendar days past due.

45-21-103. Commencing foreclosure sale.

A lender, mortgage servicer, or an authorized agent of a lender or mortgage servicer, shall not commence a civil action for a residential foreclosure sale until thirty (30) calendar days after initial contact is made with the borrower as required by § 45-21-104(a), or thirty (30) calendar days after satisfying the requirements of this section. The lender or mortgage servicer complies with § 45-21-104, if the borrower submits an application for a foreclosure prevention alternative offered by, or through, the lender or mortgage servicer; and the lender or mortgage servicer does the following:

(1) Satisfies the requirements of § 45-21-102;

(2) Attempts to contact the borrower by mailing a letter to the borrower, via first-class mail, informing the borrower of the borrower's right to discuss foreclosure prevention alternatives and providing the toll-free telephone number made available by the United States department of housing and urban development to find a housing counseling agency approved by that department;

(3) After mailing the letter required by subdivision (2), attempts to contact the borrower by telephone at least three (3) times at different hours on different days. Telephone calls made pursuant to this subdivision (3) must be made to the primary telephone number of the borrower that is on file with the mortgage servicer. A mortgage servicer may attempt to contact a borrower pursuant to this subdivision (3) by using an automated system to dial borrowers if, when the

telephone call is answered, the call is connected to a live representative of the mortgage servicer. A mortgage servicer satisfies the requirements of this subdivision (3) if it determines, after attempting to contact the borrower, that the primary telephone number of the borrower that is on file with the mortgage servicer and any secondary telephone numbers on file with the mortgage servicer have been disconnected;

(4) If the borrower does not respond within fourteen (14) calendar days after the mortgage servicer satisfies the requirements of subdivision (3), sends, by certified mail, return receipt requested, or another mailing process that requires a signature upon delivery, a letter that includes the information required by subdivision (2);

(5) Provides a means for the borrower to contact the mortgage servicer in a timely manner, including a toll-free telephone number that provides access to a live representative during business hours; and

(6) Posts on the homepage of its internet website, if any, a prominent link to the following information:

(A) Options that may be available to borrowers who are unable to afford payments under a residential mortgage loan and who wish to avoid a foreclosure sale, and instructions to such borrowers advising them on steps to take to explore those options;

(B) A list of financial documents the borrower should collect and be prepared to present to the mortgage servicer when discussing options to avoid a foreclosure sale;

(C) A toll-free telephone number for borrowers who wish to discuss with the mortgage servicer options for avoiding a foreclosure sale;

(D) The toll-free telephone number made available by the United States department of housing and urban development to find a housing counseling agency certified by the department; and

(E) If the property is subject to the requirements of this chapter, a notice of default and election to sell recorded or a complaint commencing a civil action for a foreclosure sale involving a failure to make a payment required by a residential mortgage loan that must contain a declaration that the mortgage servicer has contacted the borrower as required by § 45-21-104(a), has attempted to contact the borrower as required by this section, or that no contact was required.

45-21-104. Foreclosure prevention alternatives.

(a)

(1) The mortgage servicer shall contact the borrower in person or by telephone to assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale. During the initial contact, the mortgage servicer shall advise the borrower that the borrower has the right to request a subsequent meeting and, if requested, the mortgage servicer must schedule the meeting to occur within fourteen (14) calendar days after the request. The assessment of the borrower's financial situation and discussion of the options to avoid a foreclosure sale may occur during the initial contact or at the subsequent meeting scheduled for that purpose. In either case, the borrower must be provided the toll-free telephone number made available by the United States

department of housing and urban development to find a housing counseling agency certified by the department. A meeting scheduled pursuant to this section may occur by telephone.

(2) The loss mitigation personnel of a mortgage servicer may participate by telephone during any contact with a borrower required by this section.

(3) A borrower may designate a housing counseling agency certified by the United States department of housing and urban development, an attorney, or another adviser to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid a foreclosure sale. Contact with a person or agency designated by a borrower pursuant to this section satisfies the requirements of subdivision (a)(1). A foreclosure prevention alternative offered during a contact with a person or agency designated by a borrower pursuant to this section is subject to the approval of the borrower.

(4) If a borrower requests a foreclosure prevention alternative, then the mortgage servicer must promptly establish a single point of contact and provide to the borrower one (1) or more direct means of communication with the single point of contact who is responsible for:

(A) Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions to be considered for the foreclosure prevention alternatives;

(B) Coordinating receipt of all documents associated with the available foreclosure prevention alternatives and notifying the borrower of

any missing documents necessary to complete an application for a foreclosure prevention alternative;

(C) Having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative;

(D) Ensuring that the borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer and for which the borrower is or may be eligible; and

(E) Having access to a person or persons with the ability and authority to stop the foreclosure process when necessary.

(5) A single point of contact must remain assigned to the borrower's account until the mortgage servicer determines that all foreclosure prevention alternatives offered by, or through, the mortgage servicer have been exhausted, or the borrower's account becomes current. The mortgage servicer shall ensure that a single point of contact refers and transfers a borrower to an appropriate supervisor upon request of the borrower, if the single point of contact has a supervisor. If the responsibilities of a single point of contact are performed by a team of personnel, then the mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower's situation and current status in the process of seeking a foreclosure prevention alternative.

(6) If a borrower submits an application for a foreclosure prevention alternative but does not initially submit all the documents or information required to complete the application, then the mortgage servicer shall:

(A) Include in the initial acknowledgment of receipt of the application required by subdivision (a)(7) a statement of any deficiencies in the borrower's application; and

(B) Allow the borrower not less than thirty (30) calendar days to submit any documents or information required to complete the application.

(7) Not later than five (5) business days after receiving an application for a foreclosure prevention alternative, or any document in connection with such an application, a lender, mortgage servicer, mortgagee, or beneficiary of the deed of trust shall send to the borrower written acknowledgment of the receipt of the application or document. The lender or mortgage servicer shall include in the initial acknowledgment of receipt:

(A) A description of the process for considering the application, including a statement that:

(i) The lender or mortgage servicer must either deny the application for a foreclosure prevention alternative or submit a written offer for a foreclosure prevention alternative within thirty (30) calendar days after the borrower submits a complete application for a foreclosure prevention alternative; and

(ii) If the lender or mortgage servicer submits to the borrower a written offer for a foreclosure prevention alternative, the borrower must accept or reject the offer within fourteen (14) calendar days after the borrower receives the offer, and the offer is deemed to be rejected if the borrower does not accept or reject

the offer within fourteen (14) calendar days after the borrower receives the offer;

(B) Any deadlines that affect the processing of an application for a foreclosure prevention alternative, including, without limitation, the deadline for submitting any missing documentation;

(C) The expiration dates for any documents submitted by the borrower; and

(D) A statement requiring all parties to negotiate in good faith toward reaching a mutually agreed upon foreclosure prevention alternative, which includes providing accurate and timely documentation as required by a foreclosure prevention alternative.

(8) If a borrower submits an application for a foreclosure prevention alternative offered by, or through, the borrower's lender or mortgage servicer, then the lender, mortgage servicer, or an authorized agent of such person shall not record a notice of default and election or notice to sell, commence a civil action for a residential foreclosure, or conduct a foreclosure sale until one (1) of the following has occurred:

(A) The borrower fails to submit all the documents or information required to complete the application within thirty (30) calendar days after the date of the initial acknowledgment of receipt of the application sent to the borrower pursuant to subdivision (a)(7);

(B) The lender or mortgage servicer makes a written determination that the borrower is not eligible for a foreclosure prevention alternative, and any appeal period has expired;

(C) The borrower does not accept a written offer for a foreclosure prevention alternative within fourteen (14) calendar days after the date on which the offer is received by the borrower; or

(D) The borrower accepts a written offer for a foreclosure prevention alternative, but defaults on, or otherwise breaches the borrower's obligations under, the foreclosure prevention alternative.

(9) A foreclosure prevention alternative application is complete when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes, but not less than the timeframes required by this subsection (a), specified by the mortgage servicer.

(b)

(1) No later than thirty (30) calendar days after the borrower submits a complete application for a foreclosure prevention alternative, the mortgage servicer shall submit to the borrower a written offer for a foreclosure prevention alternative or the written statement of the denial of the application described in subdivision (b)(4). The borrower must accept or reject the offer within fourteen (14) calendar days after the borrower receives the offer.

(2) If a borrower does not accept a written offer for a foreclosure prevention alternative within fourteen (14) calendar days after the borrower receives the offer for the foreclosure prevention alternative, then the offer is deemed to be rejected.

(3) If a borrower accepts an offer for a foreclosure prevention alternative, then the mortgage servicer shall provide the borrower with a copy of the complete agreement evidencing the foreclosure prevention alternative, signed by the lender, mortgage servicer, or an agent or authorized representative.

(4) If a borrower submits a complete application for a foreclosure prevention alternative and the borrower's application is denied:

(A) The lender or mortgage servicer must send to the borrower a written statement of:

(i) The reason or reasons for the denial;

(ii) The amount of time the borrower has to request an appeal of the denial, which must be not less than thirty (30) calendar days; and

(iii) Instructions regarding how to appeal the denial, including how to provide evidence that the denial was in error; and

(B) The lender, mortgage servicer, mortgagee, trustee, beneficiary of the deed of trust, or an authorized agent of such person shall not record a notice of default and election or notice to sell, commence a civil action for a residential foreclosure, or conduct a foreclosure sale until the later of:

(i) Thirty-one (31) calendar days after the borrower is sent the written statement required by subdivision (b)(4)(A); and

(ii) If the borrower appeals the denial, then the later of:

(a) Fifteen (15) calendar days after the denial of the appeal; or

(b)

(1) If the appeal is successful, fourteen (14) calendar days after a first lien loan modification or another foreclosure prevention alternative offered after appeal is rejected by the borrower; or

(2) If the appeal is successful and a first lien loan modification or another foreclosure prevention alternative is offered and accepted, the date on which the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.

(5) If the borrower appeals the denial of a complete application for a foreclosure prevention alternative, not later than thirty (30) calendar days after the borrower requests the appeal, then the mortgage servicer must submit to the borrower a written offer for a foreclosure prevention alternative or a written denial of the appeal. The borrower must accept or reject the offer within fourteen (14) calendar days after the borrower receives the offer. If a borrower does not accept a written offer for a foreclosure prevention alternative within fourteen (14) calendar days after the borrower receives the written offer for the foreclosure prevention alternative, then the offer is deemed to be rejected.

(6) A mortgage servicer shall not charge or collect:

(A) An application, processing, or other fee for a foreclosure prevention alternative; or

(B) A late fee for periods during which:

(i) A foreclosure prevention alternative is under consideration or a denial is being appealed;

(ii) The borrower is making timely payments under a foreclosure prevention alternative; or

(iii) A foreclosure prevention alternative is being evaluated or exercised.

(7) A mortgage servicer is not required to evaluate an application from a borrower who has already been evaluated or afforded a fair opportunity to be evaluated for a foreclosure prevention alternative unless:

(A) There has been a material change in the borrower's financial circumstances since the date of the borrower's previous application; and

(B) That change is documented by the borrower and submitted to the mortgage servicer.

45-21-105. Notice of sale.

The trustee, or other person authorized to make the sale under the terms of the deed of trust, shall, after expiration of no less than ninety (90) days following the recording of the notice of default and election to sell, and before the making of the sale, give notice of the time and place of the sale by recording the notice of sale and by:

(1) Providing the notice to each trustor and any other person entitled to notice by personal service, by electronic transmission if authorized by the parties, or by mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice pursuant to this section;

(2) Posting a similar notice particularly describing the property, for twenty (20) days consecutively, in a public place in the county where the property is situated; and

(3) Publishing a copy of the notice once each week for three (3) consecutive weeks in a newspaper of general circulation in the county where the property is situated.

45-21-106. Liability – Remedies.

(a) The power of sale must not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness, until the following apply:

(1) The lender or an authorized agent of the lender files for record, in the office of the recorder of each county where the mortgaged or trust property or some part or parcel of the property is situated, a notice of default which must include the following:

(A) The name or names of the trustor or trustors along with the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property;

(B) A statement that a breach of the obligation for which the mortgage or transfer is in trust has occurred; and

(C) A statement setting forth the nature of each breach actually known to the beneficiary and of the beneficiary's election to sell to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default; and

(2) No less than ninety (90) days elapses following the filing of the notice of default.

(b) A civil action for a foreclosure sale involving a failure to make a payment required by a residential mortgage loan must be dismissed without prejudice, and any notice of default, election to sell, or notice of sale recorded must be rescinded and any pending foreclosure sale must be canceled if:

(1) The borrower accepts a permanent foreclosure prevention alternative;

(2) A notice of sale is not recorded within nine (9) months after the notice of default and election to sell is recorded; or

(3) A foreclosure sale is not conducted within ninety (90) calendar days after a notice of sale is recorded.

(c) The periods specified in subdivisions (b)(2) and (3) are tolled if a borrower has:

(1) Filed a case under 11 U.S.C. Chapter 7, 11, 12, or 13, until the bankruptcy court enters an order closing or dismissing the bankruptcy case or granting relief from a stay of foreclosure or trustee's sale; or

(2) Submitted an application for a foreclosure prevention alternative, until the date on which:

(A) A written offer for a foreclosure prevention alternative is submitted to the borrower;

(B) A written statement of the denial of the application has been submitted to the borrower pursuant to § 45-21-104(b)(4), and any appeal period pursuant to § 45-21-104(b)(4) has expired; or

(C) If the borrower has appealed the denial of an application for a foreclosure prevention alternative, a written offer for a foreclosure prevention alternative or a written denial of the appeal is submitted to the borrower.

(d) If a civil action is dismissed pursuant to subsection (b), then a notice of default and election to sell recorded or a notice of sale recorded is rescinded, and any pending foreclosure sale is canceled, the mortgagee or beneficiary of the deed of trust is restored to its former position and has the same rights as though an action for a judicial

foreclosure had not been commenced or a notice of default and election to sell had not been recorded.

(e) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of this chapter. If a certificate of the sale of the property has not been recorded, then a borrower may obtain an injunction to enjoin a material violation of this chapter. An injunction issued pursuant to this section remains in place and any foreclosure sale must be enjoined until the court determines that the mortgage servicer, mortgagee, beneficiary of the deed of trust, or an authorized agent of such person has corrected and remedied the violation giving rise to the action for injunctive relief. An enjoined person may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(f) After a trustee's deed of sale has been recorded or a certificate of the sale of the property has been recorded, a borrower may bring a civil action in the district court in the county in which the property is located to recover the borrower's actual economic damages resulting from a material violation of this chapter by the mortgage servicer, mortgagee, beneficiary of the deed of trust, or authorized agent of such person, if the material violation was not corrected and remedied before the recording of the trustee's deed upon sale or the recording of the certificate of sale of the property. If the court finds that the material violation was intentional or reckless or resulted from willful misconduct by a mortgage servicer, mortgagee, beneficiary of the deed of trust, or an authorized agent of such person, then the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(g) A mortgage servicer, lender, beneficiary of the deed of trust, or an authorized agent of such person is not liable for a violation of this chapter that the person has corrected and remedied, or that has been corrected and remedied on its behalf by a third

party, before the recording of the trustee's deed upon sale or the recording of the certificate of sale of the property.

(h) A violation of this chapter does not affect the validity of a sale to a bona fide purchaser for value and any of its encumbrances for value without notice.

(i) A court may award a prevailing borrower costs and reasonable attorney's fees in an action brought pursuant to this chapter.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 5. This act takes effect July 1, 2023, the public welfare requiring it.