

By: Senator(s) Dawkins

To: Business and Financial
Institutions

SENATE BILL NO. 3084

1 AN ACT TO PROHIBIT FORECLOSURE ON RESIDENTIAL PROPERTY UNLESS
2 THE MORTGAGEE OR HOLDER OF THE MORTGAGE GIVES THE MORTGAGOR
3 90-DAYS' WRITTEN NOTICE; TO PRESCRIBE THE CONTENTS OF THE NOTICE
4 TO FORECLOSE; TO REQUIRE THE MORTGAGEE TO NOTIFY THE COMMISSIONER
5 OF BANKING AND CONSUMER FINANCE OF THE DATE OF THE FORECLOSURE
6 SALE, THE PURCHASE PRICE OBTAINED AT THE SALE, AND A COPY OF THE
7 NOTICE TO FORECLOSE; TO REQUIRE THE COMMISSIONER OF BANKING AND
8 CONSUMER FINANCE TO MAINTAIN A DATABASE OF CERTAIN FORECLOSURE
9 ACTIVITY INFORMATION; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** (1) After a breach of condition of a mortgage
12 loan secured by residential property in the State of Mississippi,
13 a mortgagee or holder of the mortgage shall not proceed against
14 the mortgaged premises under a power of sale unless the mortgagee
15 or holder of the mortgage gives the mortgagor the notice described
16 in this section.

17 (2) The notice shall be in writing and shall be mailed,
18 postage prepaid, by certified mail with return receipt requested,
19 to the mortgagor at his last address then known to the mortgagee,
20 at least ninety (90) days before exercising any rights under a
21 power of sale.

22 (3) The notice shall conspicuously state the rights of the
23 mortgagor upon default in substantially the following form:

24 The heading shall read: "Notice of Intent To Foreclose and
25 Right to Cure." The body of the notice shall read: "You are now
26 in default on a mortgage loan transaction dated _____. This
27 mortgage loan is secured by property located at _____. This
28 loan was originated by (name of mortgagee), assigned to _____
29 (if applicable) and is being serviced by _____ (if applicable).

30 The mortgage broker/mortgage originator for this mortgage loan



31 transaction was _____. You may cure your default by paying all
32 sums due on the mortgage loan on or before (a date which is at
33 least ninety (90) days after the notice has been mailed). If you
34 pay this amount within the time allowed, you are no longer in
35 default and may continue on with the transaction as though the
36 default had not occurred. You may contact the mortgagee or
37 mortgagee's agent at (telephone number of mortgagee or mortgagee's
38 agent) in order to obtain the amount due to cure the default on
39 your mortgage loan.

40 If you do not cure your default by the date stated above,
41 (name of mortgagee) may be in foreclosure proceedings against you,
42 and you could lose your home."

43 (4) A copy of the notice described in this section shall be
44 filed with the Commissioner of Banking and Consumer Finance and
45 shall include the rate of interest on the loan and whether it was
46 a variable or fixed rate of interest. The filing fee for the
47 notice shall be in an amount determined by the commissioner.

48 (5) No attorney's fees or other fees or charges other than
49 per diem interest may be charged to the mortgagor during the
50 mortgagor's ninety-day right to cure.

51 (6) If, after receiving a Notice of Intent to Foreclose and
52 Right to Cure from the mortgagee under this section, the mortgagor
53 fails to cure a default on a mortgage loan secured by residential
54 property within the time permitted by the notice (which shall be
55 at least ninety (90) days after the notice has been mailed), the
56 mortgagee may do all acts authorized or required under the power
57 of sale. If the residential property securing the mortgage loan
58 is sold at a foreclosure sale, the mortgagee shall notify the
59 commissioner in writing of the date of the foreclosure sale, the
60 purchase price obtained at the sale, and shall include a copy of
61 the notice required under this section.

62 (7) For the purposes of this section, the following terms
63 shall have the following meanings:



64 (a) "Commissioner" means the Commissioner of Banking
65 and Consumer Finance of the State of Mississippi.

66 (b) "Default" means a condition in which a homeowner is
67 one or more months in arrears on the mortgage payments.

68 (c) "Purchaser" means any person who acquires title to
69 residential property.

70 (d) "Transfer of title" means the transfer of a
71 mortgagor's interest to a purchaser by purchase agreement, option
72 to purchase, lease or any other means, or by the creation of a
73 mortgage or other lien or encumbrance that allows the purchaser to
74 obtain legal or equitable title to all or part of the property.

75 (8) The transfer of title to residential property by a
76 mortgagor who is in default or foreclosure during the time of
77 default or foreclosure, made in contemplation of a subsequent
78 conveyance of an interest back to the mortgagor by the purchaser,
79 that allows the homeowner to regain possession of the residential
80 property is prohibited unless the purchaser is a spouse, parent,
81 grandparent, child, grandchild, sibling, aunt or uncle of the
82 mortgagor.

83 (9) The commissioner shall maintain a foreclosure database
84 that shall include, but not be limited to, foreclosure activity by
85 mortgage lenders, mortgage holders and mortgage servicers, as well
86 as the mortgage brokers and loan originators who placed these
87 mortgage loans in the state, including information relative to the
88 original mortgagee, and any subsequent assignee. Based on the
89 information received, the commissioner shall produce a report at
90 least annually to track developments and trends of mortgage
91 foreclosure on residential property in the commonwealth including,
92 but not limited to, an analysis of the pre-foreclosure notices
93 submitted to the commissioner compared to the final foreclosure
94 notices, any trends or patterns relative to the geographic
95 location of the residential properties, and interest rates. The
96 report shall be available to the public upon request, and the



97 commissioner shall make it available in any other manner that he
98 may choose.

99 **SECTION 2.** This act shall take effect and be in force from
100 and after July 1, 2009.

