

By: Representative Wooten

To: Banking and Financial Services

HOUSE BILL NO. 322

1 AN ACT TO ESTABLISH PROCEDURES FOR THE FORECLOSURE OF
2 MORTGAGES BY ADVERTISEMENT UNDER WHICH A BORROWER MUST BE GIVEN AN
3 OPPORTUNITY TO MEET WITH A LENDER REGARDING MODIFICATION OF A
4 MORTGAGE LOAN ON A PRINCIPAL RESIDENCE BEFORE FORECLOSURE
5 PROCEEDINGS MAY BE BEGUN; TO PROHIBIT A PARTY FROM BEGINNING
6 FORECLOSURE PROCEEDINGS BY ADVERTISEMENT IF THE PRESCRIBED
7 PROCEDURES HAVE NOT BEEN FOLLOWED OR THE APPLICABLE TIME LIMITS
8 HAVE NOT EXPIRED, OR IF THE PARTIES HAVE AGREED TO MODIFY THE LOAN
9 AND THE BORROWER IS NOT IN DEFAULT; TO REQUIRE A FORECLOSING
10 PARTY, BEFORE PROCEEDING WITH A FORECLOSURE SALE BY ADVERTISEMENT,
11 TO MAIL TO THE BORROWER A WRITTEN NOTICE CONTAINING SPECIFIED
12 INFORMATION, INCLUDING THE NAME OF A DESIGNATED CONTACT PERSON WHO
13 WILL HAVE THE AUTHORITY TO MAKE MODIFICATION AGREEMENTS AND A LIST
14 OF APPROVED HOUSING COUNSELORS; TO ALLOW THE BORROWER TO BRING AN
15 ACTION TO ENJOIN THE FORECLOSURE IF THE REQUIRED NOTICE WAS NOT
16 SERVED; TO REQUIRE THE BORROWER TO CONTACT A HOUSING COUNSELOR IF
17 HE OR SHE WISHES TO WORK OUT A MODIFICATION, AND REQUIRE THE
18 COUNSELOR TO SCHEDULE A MEETING WITH THE DESIGNATED CONTACT
19 PERSON; TO PROVIDE THAT FORECLOSURE PROCEEDINGS MAY NOT BE BEGUN
20 UNTIL 90 DAYS AFTER THE NOTICE WAS SENT, IF THE BORROWER REQUESTS
21 A MEETING; TO REQUIRE THE BORROWER, THE DESIGNATED PERSON, OR THE
22 HOUSING COUNSELOR TO CALCULATE A MODIFIED PAYMENT IF THE MEETING
23 DOES NOT RESULT IN AN AGREEMENT; TO REQUIRE THE MISSISSIPPI HOME
24 CORPORATION TO PREPARE A LIST OF APPROVED HOUSING COUNSELORS; TO
25 AMEND SECTIONS 89-1-55 AND 89-1-57, MISSISSIPPI CODE OF 1972, TO
26 CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

28 **SECTION 1.** As used in this act, unless the context otherwise
29 requires:

- 30 (a) "Borrower" means the mortgagor.
- 31 (b) "Mortgage holder" means the owner of the
32 indebtedness or of an interest in the indebtedness that is secured
33 by the mortgage.
- 34 (c) "Mortgage servicer" means the servicing agent of
35 the mortgage.

36 **SECTION 2.** (1) Every mortgage of real estate, which
37 contains a power of sale, upon default being made in any condition



38 of the mortgage, may be foreclosed by advertisement, in the cases
39 and in the manner specified in this act. However, the procedures
40 set forth in this act shall not apply to mortgages of real estate
41 held by the Mississippi Home Corporation.

42 (2) Subject to subsection (5) of this section, a party may
43 foreclose a mortgage by advertisement if all of the following
44 circumstances exist:

45 (a) A default in a condition of the mortgage has
46 occurred, by which the power to sell became operative.

47 (b) An action or proceeding has not been instituted, at
48 law, to recover the debt secured by the mortgage or any part of
49 the mortgage; or, if an action or proceeding has been instituted,
50 the action or proceeding has been discontinued; or an execution on
51 a judgment rendered in an action or proceeding has been returned
52 unsatisfied, in whole or in part.

53 (c) The mortgage containing the power of sale has been
54 properly recorded.

55 (d) The party foreclosing the mortgage is either the
56 owner of the indebtedness or of an interest in the indebtedness
57 secured by the mortgage or the servicing agent of the mortgage.

58 (3) If a mortgage is given to secure the payment of money by
59 installments, each of the installments mentioned in the mortgage
60 after the first shall be treated as a separate and independent
61 mortgage. The mortgage for each of the installments may be
62 foreclosed in the same manner and with the same effect as if a
63 separate mortgage were given for each later installment. A
64 redemption of a sale by the mortgagor has the same effect as if
65 the sale for the installment had been made upon an independent
66 prior mortgage.

67 (4) If the party foreclosing a mortgage by advertisement is
68 not the original mortgagee, a record chain of title shall exist
69 before the date of sale under Section 89-1-55 evidencing the
70 assignment of the mortgage to the party foreclosing the mortgage.



71 (5) A party shall not begin proceedings under this act to
72 foreclose a mortgage of property described in Section 3(1) of this
73 act if one or more of the following apply:

74 (a) Notice has not been mailed to the mortgagor as
75 required by Section 3 of this act.

76 (b) After a notice is mailed to the mortgagor under
77 Section 3 of this act, the time for a housing counselor to notify
78 the person designated under Section 3(1)(c) of this act of a
79 request by the mortgagor under Section 4(1) of this act has not
80 expired.

81 (c) Within fourteen (14) days after a notice is mailed
82 to the mortgagor under Section 3 of this act, the mortgagor has
83 requested a meeting under Section 4 of this act with the person
84 designated under Section 3(1)(c) of this act and ninety (90) days
85 have not passed after the notice was mailed.

86 (d) The mortgagor has requested a meeting under Section
87 4 of this act with the person designated under Section 3(1)(c) of
88 this act, the mortgagor has provided documents if requested under
89 Section 4(2) of this act, and the person designated under
90 Section 3(1)(c) of this act has not met or negotiated with the
91 mortgagor under this act.

92 (e) The mortgagor and mortgagee have agreed to modify
93 the mortgage loan and the mortgagor is not in default under the
94 modified agreement.

95 (f) Calculations under Section 5(1) of this act show
96 that the mortgagor is eligible for a loan modification and
97 foreclosure under this act is not allowed under Section 5(7) of
98 this act.

99 (6) Subsection (5) of this section applies only to
100 proceedings under this act in which the first notice of the
101 foreclosure sale as provided under Section 89-1-55 is published
102 after the effective date of this act.



103 **SECTION 3.** (1) Subject to subsection (6) of this section,
104 before proceeding with a sale under this act of property claimed
105 as a principal residence, the foreclosing party shall serve a
106 written notice on the borrower that contains all of the following
107 information:

108 (a) The reasons that the mortgage loan is in default
109 and the amount that is due and owing under the mortgage loan.

110 (b) The names, addresses, and telephone numbers of the
111 mortgage holder, the mortgage servicer, or any agent designated by
112 the mortgage holder or mortgage servicer.

113 (c) A designation of one (1) of the persons named in
114 paragraph (b) of this subsection as the person to contact and that
115 has the authority to make agreements under Sections 4 and 5 of
116 this act.

117 (d) That enclosed with the notice is a list of housing
118 counselors prepared by the Mississippi Home Corporation and that
119 within fourteen (14) days after the notice is sent, the borrower
120 may request a meeting with the person designated under paragraph
121 (c) of this subsection to attempt to work out a modification of
122 the mortgage loan to avoid foreclosure and that the borrower may
123 also request a housing counselor to attend the meeting.

124 (e) That if the borrower requests a meeting with the
125 person designated under paragraph (c) of this subsection,
126 foreclosure proceedings will not be begun until ninety (90) days
127 after the date the notice is mailed to the borrower.

128 (f) That if the borrower and the person designated
129 under paragraph (c) of this subsection reach an agreement to
130 modify the mortgage loan, the mortgage will not be foreclosed if
131 the borrower abides by the terms of the agreement.

132 (g) That if the borrower and the person designated
133 under paragraph (c) of this subsection do not agree to modify the
134 mortgage loan but it is determined that the borrower meets
135 criteria for a modification under Section 5(1) of this act and



136 foreclosure under this act is not allowed under Section 5(7) of
137 this act, the foreclosure of the mortgage will proceed before a
138 judge under Sections 11-5-93 through 11-5-117 instead of by
139 advertisement.

140 (h) That the borrower has the right to contact an
141 attorney, and the telephone numbers of The Mississippi Bar's
142 lawyer referral service and of a local legal aid office serving
143 the area in which the property is situated.

144 (2) A person who serves a notice under subsection (1) of
145 this section shall enclose with the notice a list prepared by the
146 Mississippi Home Corporation under Section 6 of this act of the
147 names, addresses, and telephone numbers of housing counselors
148 approved by the United States Department of Housing and Urban
149 Development or the Mississippi Home Corporation.

150 (3) A person shall serve a notice under subsection (1) of
151 this section by mailing the notice by regular first-class mail and
152 by certified mail, return receipt requested, with delivery
153 restricted to the borrower, both sent to the borrower's last known
154 address.

155 (4) Within seven (7) days after mailing a notice under
156 subsection (3) of this section, the person who mails the notice
157 shall publish a notice informing the borrower of the borrower's
158 rights under this section. The person shall publish the
159 information one (1) time in the same manner as is required for
160 publishing a notice of foreclosure sale under Section 89-1-55.
161 The notice under this subsection shall contain all of the
162 following information:

163 (a) The borrower's name and the property address.

164 (b) A statement that informs the borrower of all of the
165 following:

166 (i) That the borrower has the right to request a
167 meeting with the mortgage holder or mortgage servicer.



168 (ii) The name of the person designated under
169 subsection (1)(c) of this section as the person to contact and
170 that has the authority to make agreements under Sections 4 and 5
171 of this act.

172 (iii) That the borrower may contact a housing
173 counselor by visiting the Mississippi Home Corporation's Web site
174 or by calling the Mississippi Home Corporation.

175 (iv) The Web site address and telephone number of
176 the Mississippi Home Corporation.

177 (v) That if the borrower requests a meeting with
178 the person designated under subsection (1)(c) of this section,
179 foreclosure proceedings will not be begun until ninety (90) days
180 after the date the notice is mailed to the borrower.

181 (vi) That if the borrower and the person
182 designated under subsection (1)(c) of this section reach an
183 agreement to modify the mortgage loan, the mortgage will not be
184 foreclosed if the borrower abides by the terms of the agreement.

185 (vii) That the borrower has the right to contact
186 an attorney, and the telephone number of The Mississippi Bar's
187 lawyer referral service.

188 (5) A borrower on whom notice is required to be served under
189 this section who is not served and against whom foreclosure
190 proceedings are begun under this act may bring an action in the
191 chancery court for the county in which the mortgaged property is
192 situated to enjoin the foreclosure.

193 (6) If the borrower and the person designated under
194 subsection (1)(c) of this section have previously agreed to modify
195 the mortgage loan under Section 4 of this act, this section and
196 Sections 4 and 5 of this act do not apply unless the borrower has
197 complied with the terms of the mortgage loan, as modified, for one
198 (1) year after the date of the modification.

199 **SECTION 4.** (1) A borrower who wishes to participate in
200 negotiations to attempt to work out a modification of a mortgage



201 loan shall contact a housing counselor from the list provided
202 under Section 3 of this act within fourteen (14) days after the
203 list is mailed to the borrower. Within ten (10) days after being
204 contacted by a borrower, a housing counselor shall inform the
205 person designated under Section 3(1)(c) of this act in writing of
206 the borrower's request.

207 (2) After being informed of a borrower's request to meet
208 under this section, the person designated under Section 3(1)(c) of
209 this act may request the borrower to provide any documents that
210 are necessary to determine whether the borrower is eligible for a
211 modification under Section 5 of this act. The borrower shall give
212 the person designated under Section 3(1)(c) of this act copies of
213 any documents requested under this section.

214 (3) A housing counselor contacted by a borrower under this
215 section shall schedule a meeting between the borrower and the
216 person designated under Section 3(1)(c) of this act to attempt to
217 work out a modification of the mortgage loan. At the request of
218 the borrower, the housing counselor will attend the meeting. The
219 meeting and any later meetings shall be held at a time and place
220 that is convenient to all parties, or in the county where the
221 property is situated.

222 **SECTION 5.** (1) If a borrower has contacted a housing
223 counselor under Section 4 but the process has not resulted in an
224 agreement to modify the mortgage loan, the person designated under
225 Section 3(1)(c) of this act shall work with the borrower to
226 determine whether the borrower qualifies for a loan modification.
227 Unless the loan is described in subsection (2) or (3) of this
228 section, in making the determination under this subsection, the
229 person designated under Section 3(1)(c) of this act shall use a
230 loan modification program or process that includes all of the
231 following features:

232 (a) The loan modification program or process targets a
233 ratio of the borrower's housing-related debt to the borrower's



234 gross income of thirty-eight percent (38%) or less, on an
235 aggregate basis. Housing-related debt under this paragraph
236 includes mortgage principal and interest, property taxes,
237 insurance, and homeowner's fees.

238 (b) To reach the thirty-eight percent (38%) target
239 specified in paragraph (a) of this subsection, one or more of the
240 following features:

241 (i) An interest rate reduction, as needed, subject
242 to a floor of three percent (3%), for a fixed term of at least
243 five (5) years.

244 (ii) An extension of the amortization period for
245 the loan term, to forty (40) years or less from the date of the
246 loan modification.

247 (iii) Deferral of some portion of the amount of
248 the unpaid principal balance of twenty percent (20%) or less,
249 until maturity, refinancing of the loan, or sale of the property.

250 (iv) Reduction or elimination of late fees.

251 (2) In making the determination under subsection (1) of this
252 section, if the mortgage loan is pooled for sale to an investor
253 that is a governmental entity, the person designated under Section
254 3(1)(c) of this act shall follow the modification guidelines
255 dictated by the governmental entity.

256 (3) In making the determination under subsection (1) of this
257 section, if the mortgage loan has been sold to a
258 government-sponsored enterprise, the person designated under
259 Section 3(1)(c) of this act shall follow the modification
260 guidelines dictated by the government-sponsored enterprise.

261 (4) This section does not prohibit a loan modification on
262 other terms or another loss mitigation strategy instead of
263 modification if the other modification or strategy is agreed to by
264 the borrower and the person designated under Section 3(1)(c) of
265 this act.



266 (5) The person designated under Section 3(1)(c) of this act
267 shall provide the borrower with both of the following:

268 (a) A copy of any calculations made by the person under
269 this section.

270 (b) If requested by the borrower, a copy of the
271 program, process, or guidelines under which the determination
272 under subsection (1) of this section was made.

273 (6) Subject to subsection (7) of this section, if the
274 results of the calculation under subsection (1) of this section
275 are that the borrower is eligible for a modification, the mortgage
276 holder or mortgage servicer shall not foreclose the mortgage under
277 this act but may proceed before a judge under Sections 11-5-93
278 through 11-5-117. If the results of the calculation under
279 subsection (1) of this section are that the borrower is not
280 eligible for a modification or if subsection (7) of this section
281 applies, the mortgage holder or mortgage lender may foreclose the
282 mortgage under this act.

283 (7) If the determination under subsection (1) of this
284 section is that the borrower is eligible for a modification, the
285 mortgage holder or mortgage servicer may proceed to foreclose the
286 mortgage under this act if both of the following apply:

287 (a) The person designated under Section 3(1)(c) of this
288 act has in good faith offered the borrower a modification
289 agreement prepared in accordance with the modification
290 determination.

291 (b) For reasons not related to any action or inaction
292 of the mortgage holder or mortgage servicer, the borrower has not
293 executed and returned the modification agreement within fourteen
294 (14) days after the borrower received the agreement.

295 (8) If a mortgage holder or mortgage servicer begins
296 foreclosure proceedings under this act in violation of this
297 section, the borrower may file an action in the chancery court for
298 the county where the mortgaged property is situated to convert the



299 foreclosure proceeding to a judicial foreclosure. If a borrower
300 files an action under this section and the court determines that
301 the borrower participated in the process under Section 4 of this
302 act, a modification agreement was not reached, and the borrower is
303 eligible for modification under subsection (1) of this act, and
304 subsection (7) of this act does not apply, the court shall enjoin
305 foreclosure of the mortgage by advertisement and order that the
306 foreclosure proceed under Sections 11-5-93 through 11-5-117.

307 **SECTION 6.** The Mississippi Home Corporation shall develop
308 the list of housing counselors approved by the United States
309 Department of Housing and Urban Development or by the Mississippi
310 Home Corporation who may perform the duties of housing counselor
311 under Sections 3 through 5 of this act.

312 **SECTION 7.** Section 89-1-55, Mississippi Code of 1972, is
313 amended as follows:

314 89-1-55. (1) All lands comprising a single tract, and
315 wholly described by the subdivisions of the governmental surveys,
316 sold under mortgages and deeds of trust, shall be sold in the
317 manner provided by Section 111 of the Mississippi Constitution of
318 1890 for the sale of lands in pursuance of a decree of court, or
319 under execution. All lands sold at public outcry under deeds of
320 trust or other contracts shall be sold in the county in which the
321 land is located, or in the county of the residence of the grantor,
322 or one (1) of the grantors in the trust deed, provided that where
323 the land is situated in two (2) or more counties, the parties may
324 contract for a sale of the whole in any of the counties in which
325 any part of the land lies. Sale of those lands shall be
326 advertised for three (3) consecutive weeks preceding the sale, in
327 a newspaper published in the county, or, if none is so published,
328 in some paper having a general circulation in the county, and by
329 posting one (1) notice at the courthouse of the county where the
330 land is situated, for that time, and the notice and advertisement
331 shall disclose the name of the original mortgagor or mortgagors in



332 the deed of trust or other contract. No sale of lands under a
333 deed of trust or mortgage, shall be valid unless the sale has been
334 advertised as * * * provided for in this section, regardless of
335 any contract to the contrary. An error in the mode of sale such
336 as makes the sale void will not be cured by any statute of
337 limitations, except as to the ten-year statute of adverse
338 possession.

339 (2) This section shall be subject to the provisions of
340 Sections 1 through 6 of this act.

341 **SECTION 8.** Section 89-1-57, Mississippi Code of 1972, is
342 amended as follows:

343 89-1-57. (1) If a deed of trust or mortgage, with a power
344 of sale, is silent as to the place and terms of sale and mode of
345 advertising, a sale may be made after condition broken, for cash,
346 upon such notice, and at such time and place as is required for
347 sheriff's sale of like property. But all of those sales shall be
348 made in the county where the land is located, or in the county of
349 the residence of the grantor or one (1) of the grantors, provided
350 that where the land is situated in two (2) or more counties, the
351 parties may contract for a sale of the whole, or any part thereof,
352 in either county in which a part of the land lies.

353 (2) This section shall be subject to the provisions of
354 Sections 1 through 6 of this act.

355 **SECTION 9.** This act shall take effect and be in force from
356 and after July 1, 2011.

